

*A MANUAL FOR
STATE OF MARYLAND
JUDICIAL NOMINATING COMMISSIONS*

Revised
July 1999

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Manual prepared by the
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MANUAL FOR STATE OF MARYLAND JUDICIAL NOMINATING COMMISSIONS

TABLE OF CONTENTS

Message from the Governor

Message from the Chief Judge

A.	An Overview of the Nominating Commission Process.....	Page 1
	1. <i>Background</i>	
	2. <i>Purpose</i>	
	3. <i>Structure</i>	
	4. <i>Summary of Procedures</i>	
B.	The Search for Qualified Candidates.....	Page 8
	1. <i>Notice of Vacancy</i>	
	2. <i>Recruitment</i>	
	3. <i>Citizen Input</i>	
C.	The Evaluation Process.....	Page 9
	1. <i>The Personal Data Questionnaire</i>	
	2. <i>Community Information</i>	
	3. <i>Legal Reputation</i>	
	4. <i>Bar Association Recommendations</i>	
	5. <i>Attorney Grievance Commission/Commission on Judicial Disabilities</i>	
	6. <i>Personal Interviews</i>	
	7. <i>Confidentiality</i>	
D.	The Decision.....	Page 15
	1. <i>Disqualification</i>	
	2. <i>Discussion</i>	

3. *Voting*
4. *Submission of List to Governor*

E. *Appendices*

1. *Legal Bases for Commissions and their Operations*
 - a. *Executive Order of March 31, 1999*
 - b. *Court of Appeals Appellate and Trial Court Selection Regulations*
 - c. *Administrative Order Adopting Rules of Procedure*
2. *Roster of Appellate and Trial Court Judicial Nominating Commissions*
3. *Sample Announcement and Notice of Vacancy*
4. *Sample Personal Data Questionnaire*
5. *Sample Interview Questions*
6. *Qualifications of Judges*
7. *Sample Evaluation Scale*
8. *The Maryland Judicial System*
9. *Listing of the Qualities of a "Legally and Most Fully Professionally Qualified" Judicial Applicant.*



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July 13, 1999

Dear Commission Member:

In Maryland, we embrace diversity and recognize its strength. This philosophy is key if we are to have a judiciary that is truly representative of the citizens of Maryland. When I came to office in 1995, of the 240 judges State-wide, only 29 were African-Americans and only 36 were females. Something had to change if we were to make our judiciary fair, just and inclusive. We, therefore, made some changes in the judicial nominating process.

Working with the new Judicial Nominating Commissions, my Administration made history. We appointed the first African-American as Chief Judge of the Maryland Court of Appeals. We appointed the first Hispanic to sit on any Court in Maryland. We appointed the first woman to the bench on the Eastern Shore. We appointed the first African-American and first women to the bench in the more than 300 year history of Anne Arundel County, our State Capital, where key precedent cases are initially filed. It is important to note that while we made history, we continued to appoint only the most qualified persons as judges.

You have the awesome task of continuing the progress that we made during the first four years of my Administration. I am counting on you to send me the names of those individuals who are the most fully qualified to be judges. Please use this manual as a guide in your deliberations. I know that you will approach this important task with seriousness and dedication. I thank you and look forward to working with you.

Sincerely,

Parris N. Glendening
Governor



ROBERT M. BELL
CHIEF JUDGE
COURT OF APPEALS OF MARYLAND
ROBERT C. MURPHY COURTS OF APPEAL BUILDING
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July 1, 1999

Re: Judicial Nominating Commission

Dear Commission Member:

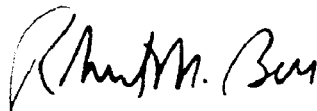
Judicial Nominating Commissions have been a part of the judicial selection process since their creation in an Executive Order issued by Governor Marvin Mandel in 1970. Since that time, every governor has issued a similar Executive Order and the composition of the Commissions has remained the same. Some modifications in how the members are selected have been made over the years, however. Governor Glendening, acting on the recommendation of a study committee he established, made modifications to the Executive Order that were designed to, and did, insure that the pool from which judicial vacancies are filled is made up of not simply the most highly qualified candidates, but also is as reflective of the State as possible.

The primary responsibility of Judicial Nominating Commissions, since their inception, has been a screening function. Admittedly, both difficult and time consuming, that function is invaluable: because of the Commission's screening of the candidates for judicial appointment, the Governor is permitted to appoint the most highly qualified candidates. That, in turn, is critical to the quality of the Judiciary. And the quality of the Judiciary is intimately related to the degree to which the Judiciary has the trust and confidence of the public; to be effective, the courts must be respected by the citizens it serves. Your efforts contribute in no small way towards engendering that respect.

To those who are serving for the first time, thank you for undertaking this arduous and often thankless duty. I am confident that you will uphold the tradition of excellence

your predecessors have established. Those of you who are repeaters also deserve our thanks.
Keep up the good work.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert M. Bell".

Robert M. Bell

RMB/vr

A. AN OVERVIEW OF THE NOMINATING COMMISSION PROCESS.

1. Background.

Because of the vital role judges play in American society, the selection process for judicial office has been the subject of much study and debate. Most State constitutions adopted at the time of the American Revolution provided for the appointment of judges by the chief executive. This method is still used in the federal system and in a number of states.

In the 19th Century, with the advent of Jacksonian democracy, popular election of judges was adopted in many states. Popular election, however, had its drawbacks. The system did not always induce the most qualified people to seek judicial office. Moreover, many contended that the usual political election process was not an effective means of deciding who was best qualified to serve on the bench. Serious questions were raised about the impact of the elective system on judicial independence and about the propriety of judicial involvement in the political election process.

In the 20th Century, intensive reevaluation of the selection system began. In 1937, Missouri became the first state to adopt a selection system involving nominating commissions for initial selection, and non-competitive on-the-record elections for retention in office. In these elections, the ballots simply require the voters to answer "yes" or "no" to the question: "Shall Judge X be retained in office?"

Currently, thirty-three states and the District of Columbia use merit selection for the selection of some or all of their judges. Even at the federal level, where all

judges are appointed, the use of judicial nominating commissions has been increasing.

Maryland's judicial selection history parallels that of the nation. Our Constitution of 1776 called for appointed judges. In the 19th Century, popular election of judges was adopted. In the 20th Century, there has been a trend away from popular election. Currently, the judges of our appellate courts are appointed by the Governor, confirmed by the Senate, and retained in office in non-competitive on-the-record elections. Judges of the Circuit Court are usually appointed by the Governor, although persons may be directly elected to this position through the political election process. At this court level, and only this level, judges must be retained in office through the political election process. The judges of the District Court are appointed by the Governor, confirmed by the Senate, and retained in office by a reconfirmation process.

Maryland developed a judicial nominating commission procedure in 1970, when then Governor Marvin Mandel established the first nominating commissions by Executive Order. Governor Mandel restructured the commissions by another Executive Order in 1974. Acting Governor Blair Lee, III, retained the nominating commission system. Governor Harry Hughes also subscribed to the process of using nominating commissions. Governor William Donald Schaefer continued the process.

Governor Parris Glendening by his Executive Order dated April 28, 1995, committed the State to creating a more representative judicature. The Order was slightly amended as Governor Glendening began his second term (see Appendix 1(a)). Governor Glendening's Executive Order on Judicial Nominating Commissions ensures that a cross section of the public is represented on the nominating

commissions and that the public is given an opportunity to comment on the candidates.

2. Purpose.

The judicial nominating process in Maryland is based on the principle of merit selection. The Executive Order states, "The Commission shall select and nominate to the Governor persons found by the Commission to be legally and most fully professionally qualified." The duties of the judicial nominating commissions and its members in Maryland in regard to judicial selection should be:

- i. to seek the best potential judicial talent in the State and encourage the application of women and minorities who continue to be underrepresented among Maryland's judicial ranks;
- ii. to operate consistently, fairly, and in strict confidence to encourage candidates to apply;
- iii. to function in a manner that fosters respect and public trust in the process;
- iv. to identify those persons who are the most qualified for the Maryland bench.

Every judicial nominating commission and its members should take an active role in recruiting and screening candidates for judicial positions. This must be done in an organized, disciplined manner, so as not to deter good candidates or create public distrust of the commission.

3. Structure.

The Executive Order establishes an Appellate Court Judicial Nominating Commission and sixteen Trial Court Judicial Nominating Commissions. The Appellate Commission has seventeen members, including the Chair, eight lay members and one attorney appointed by the Governor, and seven lawyer members elected by the Maryland Bar. The Appellate Commission makes recommendations for any vacancy that occurs on the Court of Appeals or the Court of Special Appeals.

Each Trial Court Judicial Nominating Commission is composed of thirteen members. The Governor appoints a Chair, two lawyer members and six lay members to each commission. The members of the Maryland Bar elect four lawyer members.

Each trial court judicial nominating commission is responsible for the judicial appointments in its respective commission district. Commission districts are allocated in one of two ways: (1) within each county with a population of 100,000 or more, or (2) in multiple counties within a circuit. Each trial court nominating commission makes recommendations for all trial court vacancies (District Court or Circuit Court) that occur within the geographical confines of its particular district.

The Administrative Office of the Courts (AOC) is the secretariat to the seventeen commissions. The AOC performs administrative functions for the commissions. An AOC representative attends commission meetings but does not have a vote and does not participate in discussions regarding the qualifications of the candidates.

Each commission must elect a vice-chair to assume Chair duties in the absence of the appointed Chair. The vice-chair is elected by a vote of the majority of the full membership of the commission.

A commission member is not eligible for appointment to a judicial vacancy that occurs during the term for which the member was chosen. Thus, a lawyer's decision to serve on a commission means that the lawyer is removed from consideration for any judicial vacancy on an appellate court (if a member of the appellate commission) or on a trial court (if a member of a trial courts commission), if the vacancy occurs before the selection of successors following the qualification of the Governor elected at the next quadrennial election. A member does not become eligible for appointment by resigning before the expiration of the Commission's term.

4. Summary of Procedures.

When a vacancy occurs in a judicial office in Maryland, the appropriate nominating commission is notified of the vacancy by the AOC. This notification activates the commission process. Under the terms of the Governor's Executive Order, the commission has 85 days from the date of notification to submit names of qualified persons to the Governor.

Notice of the vacancy is given to the Maryland State Bar Association and other bar associations as appropriate. An applicant will obtain a personal data questionnaire form from the AOC, or from the Chair or a member of the commission. The applicant will return the completed form, with the required number of copies, to the AOC, which distributes it to the commission members. Commission members may recruit candidates. Applicants for vacancies on the

appellate and circuit courts must include two writing samples. These writing samples must be the work of the applicant unless otherwise indicated.

The commission compiles all necessary information about the candidates. This includes examining their personal data questionnaires, conducting personal interviews with the applicants, requesting reports from the Attorney Grievance Commission and the Commission on Judicial Disabilities (if applicable), reviewing individual recommendations and those from the State and local bar associations, and gathering any other background material that a commission member may deem necessary for a proper evaluation of each judicial candidate.

The list of candidates becomes public information once the filing deadline is reached. The commission will then advertise the list of candidates in the local newspaper(s) and invite the public to submit written comment. After each commission member has had sufficient opportunity to review all the gathered information on the applicants, the commission meets. The meeting date must be at least fifteen days after the deadline for filing applications.

At the meeting, the commission members discuss and initially screen all applicants. All available and pertinent information is reviewed. No person may be nominated unless the person has first been interviewed by the commission. The commission meeting, therefore, usually includes interviews of the candidates, although in some cases interviews may be scheduled on other dates, depending on the commission's wishes.

Following the evaluation and discussion process, a vote is taken on the list of applicants by secret written ballot. At least eleven members must be present at a voting session on applicants for a seat on an appellate court; at least ten members

must be present at a voting session for a trial court seat. A member may vote for as many candidates as the member thinks are most fully qualified for the office. A commission member may vote for none, some, or all of the candidates. Proxy or absentee voting is not permitted.

In order to qualify for inclusion on the list sent to the Governor, a candidate must receive the vote of a majority of the members present at a voting session. Therefore, each candidate for an appellate court must receive at least nine votes at a meeting where sixteen or seventeen commission members are present, eight votes at a meeting where fourteen or fifteen commission members are present, seven votes if twelve or thirteen members are present, and six votes if eleven members are present at a voting session. At a voting session for a trial courts commission, each candidate must receive at least six votes at a meeting where ten or eleven commission members are present and seven votes if twelve or thirteen commission members are present.

For a single vacancy, a maximum of seven names (excluding the "pool," which is described below) is permitted on any list submitted to the Governor for the judicial vacancy. The minimum number of names that must be sent to the Governor depends on various factors fully explained in the Executive Order at §§ B(6) and C(6). The Governor is bound by his Executive Order to fill the judicial vacancy by appointing one of the persons from the final list submitted to him by the judicial nominating commission. The Governor may, however, ask for additional names to be included on the list.

Persons on the list submitted to the Governor, but who are not appointed, are included in a pool and will be automatically considered for later appointment to a vacancy on the same court for which nominated. The pool candidates are

included along with a new commission list, provided that the subsequent vacancy occurs within twenty four months of the submission of the initial list. Pool candidates are not re-interviewed.

B. THE SEARCH FOR QUALIFIED CANDIDATES.

1. Notice of Vacancy.

When a vacancy occurs on the Maryland bench and the Administrative Office of the Courts has notified the appropriate nominating commission, a notice of the vacancy is placed in The Daily Record. The notice informs all potential candidates of the opening and the nominating commission that will be considering applicants. The notice provides the closing date for submitting personal data questionnaires. The AOC also sends this information to the Maryland State Bar Association, Women's Bar Association, Monumental City Bar Association and other bar associations.

The Chair or a designated member of the commission may issue a press release to appropriate newspapers in order to inform the general public about the judicial vacancy. The press release should detail the responsibilities and functions of the commission, the desire of the commission to receive applications from qualified candidates and the closing date for applications.

The commission members should ensure that every effort is made to publicize the vacancy widely throughout the commission district, whether by newspaper advertisement, press release, or other means.

2. Recruitment.

Individuals who desire to be judges and feel that their qualifications make them legally and professionally most fully qualified often will, on their own initiative, request personal data questionnaires from the AOC. Commission members are encouraged, however, to recruit other promising candidates. In this way, a wider pool of applicants can be considered for the judicial office. It is crucial that commission members not make promises of nomination to persons they recruit. Everyone who wishes to be considered by a commission must file a personal data questionnaire with the AOC by the closing date.

3. Citizen Input.

Citizen input should be encouraged in the judicial selection process. To that end, following the closing date for applications the names of applicants are published in at least one newspaper read by the general public, with a request for written, signed comments. Citizen comments concerning the qualifications of applicants to the judicial vacancy should be evaluated by the commission when considering the applicants.

C. THE EVALUATION PROCESS.

In order to select quality judges, the commission must carefully screen and investigate all candidates. "All aspects of a candidate's background should be evaluated: performance under pressure and stress; interpersonal relationships in the office and outside the office; commitment to the public and civic affairs; people

skills; [and] reputation for integrity and good character."¹ Commission members can draw from a number of sources to obtain relevant information about the candidates for judicial office. This information may include the academic, legal, and community experience of the candidate, work history, and other material such as the general reputation of the candidate in the community and the candidate's personal qualities.

1. The Personal Data Questionnaire.

The initial source of information about an applicant is the personal data questionnaire (see sample questionnaire in Appendix 4). The questionnaire contains the candidate's personal and educational background, legal experience, community services, and general interests. This questionnaire also provides the commission members with an initial profile of the candidate, including whether he or she meets the basic constitutional requirements for judicial office (see Appendix 6). The questionnaire can be used as an initial screening device to determine whether the judicial candidate merits further consideration or investigation.

A candidate who reapplies to a commission with which he or she has filed a personal data questionnaire within the twenty-four month period immediately preceding reapplication need not file a new questionnaire. The candidate may submit a letter stating that he or she is reapplying and setting forth any changes that have occurred since the submission of the earlier questionnaire. These letters are distributed to commission members in the same fashion as questionnaires.

¹ From the Final Report of the Maryland State Bar Association Special Committee on Judicial Personnel Management Issues of the Section on Judicial Administration. The Special Committee's listing of the qualities of a "legally and most fully professionally qualified" applicant is attached at Appendix 9.

Commission members should retain all questionnaires for at least two years after they have been received to facilitate consideration of these reapplications.

2. Community Information.

Once an initial profile of a candidate is obtained through the questionnaire, commission members should seek additional information to complete the candidate's profile. Community groups may be contacted and asked for their appraisal of the candidate. Some examples of organizations to contact are community service groups, civil rights groups, women's organizations, or public interest groups. In addition, organizations in which the candidate has been active can be asked to assess the abilities of the candidate. Commission members should decide what information from these groups is relevant to the candidate's fitness for judicial office and evaluate accordingly.

3. Legal Reputation.

Commission members may contact members of the legal community to seek opinions on the candidate's legal competence. Contacts may include former or current law partners, associates or co-workers, former law professors, former classmates, former law clerks, co-counsel, opposing counsel, judges before whom the candidate has practiced and, if the candidate is already a judge, attorneys who have presented cases before the candidate. In this way, the commission can best evaluate the candidate's legal attitude, court manner, and general reputation.

4. Bar Association Recommendations.

When a vacancy in judicial office occurs, various bar associations are

notified. The bar associations usually prepare recommendations concerning the candidates and submit them to the commission for use in the evaluation of each candidate.

The Maryland State Bar Association usually submits to the commission ratings of the individual candidates. The ratings are "highly qualified," "qualified," "not qualified," or "insufficient information." The ratings come from a committee of the State Bar Association with Statewide representation, and the committee members, by voting, rate the individual candidates for the vacant judicial office. Some local bar associations have similar procedures; others conduct a poll of members to determine the local support for the judicial candidates; some make recommendations through membership meetings.

In most cases, bar associations give no reasons for their recommendations. In some cases, however, candidates are rated in order of preference; in others, the bar association simply lists all candidates deemed qualified. Bar associations may interview candidates but most do not conduct extensive investigations into candidates' backgrounds.

Bar recommendations are not conclusive, but should be one factor in the commission's decision. The commission should weigh a bar's recommendation in light of all other information obtained about an applicant, and take into account the manner in which the bar association has gone about making its recommendations.

5. Attorney Grievance Commission/Commission on Judicial Disabilities.

Two other sources of information about a candidate's qualifications for a judgeship are the Attorney Grievance Commission and the Commission on Judicial

Disabilities. The Attorney Grievance Commission, established by the Court of Appeals on the recommendation of the Maryland State Bar Association, polices the legal profession by enforcing the Rules of Professional Conduct, which are the ethical standards for lawyers. All lawyers must adhere to these rules. Complaints about lawyers' practices are investigated by the Attorney Grievance Commission, and violators are disciplined by the Court of Appeals.

The AOC routinely arranges for a check with the Attorney Grievance Commission to determine whether complaints have been filed against any of the judicial candidates and, if so, what action was taken on the complaints. This information is made available to the nominating commission. If a candidate is a judge, then the AOC will check with the Commission on Judicial Disabilities, which polices the Maryland judiciary and ensures that judges adhere to the Maryland Code of Judicial Conduct.

6. Personal Interviews.

Personal interviews reveal information about a candidate that is not always reflected by the written word. The interview tends to disclose the candidate's character, personality, temperament, and personal views, which gives a more-rounded profile of the candidate.

Commission members may individually meet and confer with candidates. However, the Executive Order prohibits the submission to the Governor of any nominee who has not been interviewed by the commission. In certain instances, a commission Chair may designate panels of commission members to facilitate the interview process.

The personal interview assists the commission in choosing those individuals who are most qualified to be judges in the State of Maryland. A capable judge should possess the qualities of integrity and good character; ability to discharge the essential functions of office; outstanding legal ability and extensive legal experience. In addition, a judge should have the proper judicial temperament; that is, the ability to be fair, open-minded, and even-tempered while dealing with the demands of the bench. The interview should elicit illustrations of these qualities from each candidate.

The commission may decide before the interview on the general framework of questioning. To ensure fairness in the interview process, the commission may wish to afford each candidate the opportunity to reply to essentially the same questions and be asked about the same issues as other candidates. Questions should be designed to get to know the candidate. Some questions should be wide-ranging and thought-provoking. Others should attempt to reveal a candidate's attitudes. The commission should also inquire about a candidate's philosophies and views on relevant issues to assess the candidate's analytical abilities and approach to problem solving. A particular stand on a subject is not important, but the underlying thought process and justification for the stand are. Appendix 5 contains sample interview questions.

The interview may be used for other purposes as well. Sometimes, the personal data questionnaire or other sources disclose information that requires amplification or clarification. Commission members may wish additional detail about a candidate's practice or prior experience, or an explanation either of any lawsuits in which the candidate has been a party or of complaints made to the Attorney Grievance Commission.

Sometimes, adverse information about a candidate may be received. The candidate must be given an opportunity to refute or explain this information if the commission is to use it later in evaluating the candidate.

An interview may last from fifteen minutes to an hour or more, depending upon the wishes of the commission members and the nature of the matters discussed. In every case, interviewing should be conducted with dignity and courtesy, and commission members should refrain from expressing conclusions about a candidate during the course of the interview.

7. Confidentiality

All information on the candidate provided in the questionnaire must be held in strict confidence by all members of the commission. Likewise, discussions held regarding the individual applicant's qualification and ability to serve as a judge must be confidential. Confidentiality is essential both to open and frank discussion by the commission of all of the issues concerning the candidates and to maintaining the integrity of the selection process.

D. THE DECISION.

Once the gathering of information, including interviews, is completed, the commission meets to determine which candidates should be recommended to the Governor as being "legally and most fully professionally qualified" for judicial office as required by the Executive Order.

1. Disqualification.

Because of the need for both impartiality and the appearance of impartiality, the rules of procedure for nominating commissions require disqualification of commission members under certain circumstances. The rules of procedure are found in Appendix 1(c), Sec. 5.

Under these rules, no commission member may "attend or participate in any way in commission deliberations respecting a judicial appointment if any applicant for the appointment is: (1) a near relative of the commission member by blood or marriage (Rule 5(b) defines relationships based on "marriage, consanguinity or affinity, within the third degree, counting down from a common ancestor to the more remote."), or (2) a law partner, associate, employer, employee or other co-worker of the commission member." As soon as the candidacy of a person meeting one of these criteria is known, the commission member who is disqualified is informed, and all subsequent communications with regard to that judicial vacancy are stopped.

In addition to this rule of strict disqualification, the rules provide that if a commission member and a candidate "have a personal, business, professional, or political relationship which is substantial, although not as close as a relationship described [above], the commission member shall disclose the relationship to the other members of the commission present" at the meeting. The extent to which the disclosing commission member may participate further in that meeting is determined by vote of a majority of the other commission members present.

Therefore, the first order of business at a meeting should be the disclosure of the pertinent information by any member who might have a relationship with a

candidate not requiring mandatory disqualification but required to be revealed to the other commission members. Depending on the vote of the majority of the other commission members, that member may fully participate in the meeting, may be required to leave the meeting, or may simply leave the room while the particular candidate is interviewed and not be permitted to participate in the discussion of the candidate's qualifications prior to the vote.

2. Discussion.

There should be a full and candid discussion of the qualifications of each candidate. The discussion should be based on all information obtained by the commission, including personal interviews. Each commission member should be free to contribute his or her own views as to the qualifications of each candidate.

Because the desirable qualities of a judge are to a great extent subjective in nature, the final decision-making process is a difficult one. It is not easy to translate these qualities into quantifiable or mathematical criteria. Nevertheless, some commissions have used rating scales to assist in their deliberations. One such scale is contained in Appendix 7. This scale may also be used as a checklist of qualifications many consider desirable in a judge.

3. Voting.

At the conclusion of whatever discussion the commission thinks appropriate, a vote must be taken. At a trial courts commission meeting, at least ten commission members must be present for a voting session. Eleven members must be present for a voting session of the appellate commission. To be valid, the vote must be taken by secret written ballot. Absentee or proxy voting is not permitted.

Commission members cannot be required to vote for a specific number of nominees. The commission member's vote must be based on the member's own personal evaluation of all the information available. The member should vote for as many or as few candidates as he or she deems legally and most fully professionally qualified for judicial office. No person may be included on the list of nominees submitted to the Governor unless that person has received the votes of at least a majority of votes of the commission members present at a voting session.

4. Submission of List to Governor.

Executive Order 01.01.1999.08 specifies that a list of nominees may not include more than seven names for each vacancy. In the case of the appellate commission, the list may not consist of fewer than five names. In the case of trial courts commissions, the minimum number of names varies according to a scale set forth in the Executive Order (§ C(6)). In addition, the Executive Order spells out situations in which fewer than the normal minimum number of names may be submitted. The Governor may fill a judicial vacancy either by appointing from the most current list submitted by a commission or by appointing from a list previously submitted by the commission for a vacancy on the same court for which the current list is submitted, if the previous list was submitted within a twenty-four month period of the occurrence of the current vacancy (the pool).

When the votes have been tabulated, the AOC sends a letter to the Governor listing the names of the nominees in alphabetical order. This letter is released to the public concurrently with its transmission to the Governor. Commission members are requested not to release the names of the nominees until the Governor's Office has formally received the list.

Appendices

Appendix 1

Legal Bases for Commissions and Their Operations

EXECUTIVE ORDER
01.01.1999.08

Judicial Nominating Commissions
(Amends Executive Order 01.01.1995.13)

WHEREAS, By Executive Order 01.01.1974.23, the Governor of the State of Maryland created the Judicial Nominating Commission System for the purpose of recommending to the Governor the names of persons for appointment to the appellate and trial courts of Maryland, and providing for the composition and general functions and procedures of the Judicial Nominating Commissions;

WHEREAS, The Executive Order has been revised nine times and has provided a system which is effective in assuring the appointment of qualified persons in the Judiciary of Maryland;

WHEREAS, The interests of the people and the State of Maryland will be best served by the continued existence and application of the Judicial Nominating Commission System;

WHEREAS, By Executive Order 01.01.1995.06 and 01.01.1995.07 the Task Force on Judicial Nominating Commissions was created to make recommendations relating to the judicial nominating process to ensure that the selection and evaluation of judges is conducted fairly, based upon merit, experience and diversity;

WHEREAS, The recommendations of the Task Force were incorporated in Executive Order 01.01.1995.10; and

WHEREAS, Several additional amendments to that Executive Order are necessary.

NOW, THEREFORE, I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND

LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, AMENDING THE PROVISIONS OF EXECUTIVE ORDER 01.01.1995.13, EFFECTIVE IMMEDIATELY:

A. Definitions.

(1) In this Executive Order the following words have the meanings indicated.

(2) "Appellate Court" means the Court of Appeals of Maryland and the Court of Special Appeals of Maryland.

(3) "Trial Court" means the District Court of Maryland and the Circuit Court of a county or Baltimore City.

(4) "Secretariat" means the Administrative Office of the Courts.

B. Appellate Judicial Nominating Commission.

(1) Creation and Composition. The Appellate Judicial Nominating Commission is created as part of the Executive Department. It consists of 17 persons chosen as follows:

(a) A Chairperson appointed by the Governor. The Chairperson may but need not be a lawyer, and shall be selected from the State at large. The Chairperson may not hold an office of profit or trust under the Constitution or laws of this State or an office in a political party or be a full-time employee of the State.

(b) Eight members appointed by the Governor and who shall be chosen as follows:

(i) One each shall be selected from

the seven appellate judicial circuits. Each person shall be a resident and qualified voter in the circuit from which appointed;

(ii) One shall be a resident and qualified voter selected from the State at large;

(iii) Members appointed by the Governor may not be lawyers, hold offices of profit or trust under the Constitution or laws of this State or offices in any political party, or be full-time employees of the State; and

(iv) To the fullest extent possible, the composition of the members appointed by the Governor shall fairly and appropriately reflect the minority and female population of the area from which appointed.

(c) Eight members of the Maryland Bar who shall be selected as follows:

(i) One each shall be elected by the members of the Maryland Bar in each of the seven appellate judicial circuits. Each person shall be a qualified voter of the State, and shall reside or maintain a principal office for the practice of law in the appellate judicial circuit from which elected. These persons shall be elected by members of the Maryland Bar who are qualified voters of the State and who either reside or maintain their principal offices for the practice of law in the appropriate appellate judicial circuit;

(ii) One shall be appointed by the Governor, who shall be a resident and qualified voter of the State;

(iii) Members elected by the Maryland Bar may not hold offices of profit or trust under the Constitution or laws of the State or offices in any political party. Fair and appropriate consideration should be given to minority and female participation in the election process;

(iv) The elections in each circuit shall be conducted by the Secretariat pursuant to rules promulgated by the Court of

Appeals of Maryland;

(v) Candidates for all elected lawyer positions shall submit a petition signed by 15 lawyers;

(vi) The Governor will accept written recommendations from the leadership of bar associations regarding the appointed lawyer position; and

(vii) No more than one lawyer from the same firm or legal office may serve on the Commission.

(2) Vice Chairperson. The Commission, by vote of a majority of its full authorized membership, shall select from among the members a Vice Chairperson. The Vice Chairperson may perform any duty of the Chairperson during his/her absence, unavailability, or inability to act.

(3) Terms. Terms of the members of the Commission extend to the date of qualification of the Governor elected at each quadrennial election, and until their successors are duly chosen. However, if the Commission meets not less than twice in any 12-month period and a Commission member who is not disqualified from participating fails to attend at least 50 percent of the Commission meetings held in that period, the term of the member is terminated automatically at the end of the period and another member shall be promptly selected.

(4) Vacancies. If a vacancy occurs on the Commission by reason of the death, resignation, removal, or disqualification of a member appointed by the Governor, a successor shall be appointed by the Governor, in accordance with Section B(1)(a), (b), or (C)(II). If the vacancy occurs by reason of the death, resignation, removal, or disqualification of a member elected by the members of the Maryland Bar, a successor shall be selected pursuant to rules promulgated by the Court of Appeals of Maryland.

(5) Ineligibility for Judicial

Appointment. The Governor may not appoint a member of the Commission to a vacancy that occurs on an Appellate Court during the term for which the member was chosen.

(6) Number of Recommendations. The Commission shall submit to the Governor a list of not less than five nor more than seven nominees for each vacancy on an Appellate Court.

C. Trial Courts Judicial Nominating Commissions.

(1) Creation.

(a) The Trial Courts Judicial Nominating Commissions are created as part of the Executive Department. For the purposes of operation and administration of the Commissions, the State shall be divided into Commission Districts as follows:

(i) Commission District 1--Somerset, Wicomico, and Worcester Counties;

(ii) Commission District 2--Cecil, Kent and Queen Anne's Counties;

(iii) Commission District 3--Baltimore County;

(iv) Commission District 4--Harford County;

(v) Commission District 5--Allegany and Garrett Counties;

(vi) Commission District 6--Washington County;

(vii) Commission District 7--Anne Arundel County;

(viii) Commission District 8--Carroll County;

(ix) Commission District 9--Howard County;

(x) Commission District 10--Frederick County;

(xi) Commission District 11--Montgomery County;

(xii) Commission District 12--Calvert and St. Mary's Counties;

(xiii) Commission District 13--Prince George's County;

(xiv) Commission District 14--Baltimore City;

(xv) Commission District 15--Charles County; and

(xvi) Commission District 16--Caroline, Dorchester, and Talbot Counties.

(b) After April 28, 1995, if any county in a multi-county Commission District achieves a population of 100,000 or more as of July 1 of each quadrennial election year, based on the figures reported periodically by the Maryland Department of Health and Mental Hygiene, Division of Health Statistics, that county shall be entitled to be a separate Commission District and to have a separate Commission without further action by law or otherwise.

(2) Composition. Each Commission shall consist of 13 persons chosen as follows:

(a) A Chairperson appointed by the Governor. The Chairperson may but need not be a lawyer, but shall be a resident and qualified voter of the Commission District from which appointed. The Chairperson may not hold an office of profit or trust under the Constitution or laws of this State or an office in a political party or be a full-time employee of the State.

(b) Six members appointed by the Governor from among the residents and qualified voters of the Commission District. These persons may not be lawyers, hold offices of profit or trust under the Constitution or laws

of this State or offices in any political party, or be full-time employees of the State. If the Commission District contains more than one county, at least one person shall be appointed from each county in the Commission District, and the person shall be a resident and qualified voter of such county. To the fullest extent possible, the composition of the members appointed by the Governor shall fairly and appropriately reflect the minority and female population of the Commission District.

(c) Six members of the Maryland Bar as follows:

(i) Members shall be qualified voters in the State and maintain their principal offices for the practice of law in the Commission District. These persons may not hold offices of profit or trust under the Constitution or laws of this State or offices in any political party. At least two members shall be residents of the Commission District.

(ii) Four of the six shall be elected by the members of the Maryland Bar and shall be qualified voters in the State who maintain their principal offices for the practice of law in the Commission District. In each multi-county Commission District, there shall be at least one member who maintains a principal office for the practice of law in each county for which there may exist a nominee. Fair and appropriate consideration should be given to minority and female participation in the election process. The election shall be conducted by the Secretariat pursuant to rules promulgated by the Court of Appeals of Maryland. Candidates for all elected lawyer positions shall submit a petition signed by 15 lawyers.

(iii) Two of the six shall be appointed by the Governor. The Governor will accept written recommendations from the leadership of Bar Associations regarding the appointed lawyer positions. The Governor will consider the need for greater diversity of experience, gender and race.

(D) No more than one lawyer from the same firm or legal office may serve on the same nominating commission.

(3) Terms. The terms of the members of the Commission extend to the date of qualification of the Governor elected at each quadrennial election and until their successors are duly chosen. However, if the Commission meets not less than twice in any 12 month period and a Commission member who is not disqualified from participation fails to attend at least 50 percent of the Commission meetings held in that period, the term of the member is terminated automatically at the end of the period, and another member shall promptly be selected.

(4) Vacancies. If a vacancy occurs on a Commission by reason of the creation of a new Commission District or by reason of the death, resignation, removal, or disqualification of a member appointed by the Governor, a successor shall be appointed by the Governor in accordance with Section C(2). If the vacancy occurs by reason of the creation of a new Commission District or by reason of the death, resignation, removal, or disqualification of a member elected by the members of the Maryland Bar, a successor shall be selected pursuant to rules promulgated by the Court of Appeals of Maryland.

(5) Ineligibility for Judicial Appointment. The Governor may not appoint a member of these Commissions to a vacancy that occurs on a Trial Court during the term for which the member was chosen.

(6) Number of Recommendations. A Commission shall submit to the Governor a list of not more than seven names for each judicial vacancy on a Trial Court within its Commission District. The Commission shall submit a minimum number of names so that the number of nominees for each vacancy, including any eligible nominee on a list previously submitted as provided by Section G(2), is no less than the number specified in the following table:

Number of Lawyers Contributing to Clients' Security Trust Fund in the County	Minimum Number of Nominees Per Vacancy
------------------------------------------------------------------------------------------	-------------------------------------------------

(a) More than 750	5
(b) 201-750	4
(c) 31-200	3
(d) 30 or less	2

D. Recommending Less than Minimum Number.

(1) A Commission may recommend less than the minimum number of nominees required by Section B (6) and C(6) under the following conditions:

(a) If multiple vacancies exist for which recommendations must be made, a Commission may submit a list containing the required minimum number of nominees for one vacancy plus two additional names for each vacancy in excess of one; or

(b) If it concludes that there is less than the required minimum number of persons willing to accept appointment who are legally and fully professionally qualified. However, a Commission shall obtain the prior approval of the Governor in order to recommend fewer than four names under Section B (6) or fewer than three names under section C(6)(a) or (b) or fewer than 2 names under C(6)(c).

(2) If any person recommended for appointment is unwilling to accept appointment, or is disqualified, or is otherwise unavailable for appointment, a Commission may, upon request of the Governor, submit an additional nominee if needed to increase the list to the prescribed minimum number of names.

(3) If the position to be filled is then held by an incumbent judge who is eligible for and desires reappointment, the Commission, with the prior approval of the Governor, may

submit a list containing less than the prescribed minimum number of names.

E. Commission Procedures.

(1) Each Commission shall operate under procedures specified in rules adopted by the Chief Judge of the Court of Appeals of Maryland consistent with this Executive Order. The Secretariat and the Governor shall provide for the training of Commission members in effectively evaluating judicial candidates and in screening for sensitivity to diversity issues.

(2) Upon notification by the Secretariat that a vacancy exists or is about to occur in a judicial office for which a Commission is to make nominations, the Commission shall seek and review applications of proposed nominees for the judicial office. Application shall be made on the form prescribed by the Secretariat. The Commission shall notify the Maryland State Bar Association, Inc. and other appropriate bar associations of the vacancy and shall request recommendations from them. The Commission may also seek recommendations from interested citizens and from among its own members.

(3) The Commission shall evaluate each proposed nominee. In the course of its evaluation, the Commission may seek information beyond that contained in the personal data questionnaire submitted by a candidate. The Commission may obtain pertinent information from knowledgeable persons known to Commission members, the Attorney Grievance Commission, judges, personal references given by the candidate, criminal justice agencies, or other sources. The Commission shall place notices in at least one newspaper read by members of the general public inviting written and signed comments to the Commission regarding the named applicants for judicial appointment. A criminal justice agency, including the Central Repository, may release criminal history record information, including conviction and nonconviction data, to a Commission upon request of its chairman, for the purpose of evaluating a candidate.

(4) No fewer than 10 members shall be present at a voting session of a trial court judicial nominating commission. No fewer than 11 members shall be present at a voting session of the Appellate Judicial Nominating Commission.

(5) The Commission shall select and nominate to the Governor persons found by the Commission to be legally and most fully professionally qualified to fill a vacancy. The Commissions shall evaluate the extent to which candidates have the following qualifications for judicial office: integrity, maturity, health, if job related, judicial temperament, diligence, legal knowledge, ability and experience, and community service. Commission members shall be sensitive to gender and diversity issues in the evaluation of judicial candidates. No person's name may be submitted unless the person has been found legally and most fully professionally qualified by a vote of a majority of the members present at a voting session, as taken by secret ballot, and unless the person has been interviewed by the Commission. The secret ballots shall be sealed and delivered to the Secretariat and may be opened only by demand of the Governor or by court order.

(6) The Commission shall report in writing to the Governor the names of the persons found by the Commission to be legally and most fully professionally qualified to fill a vacancy. The names of persons shall be listed in alphabetical order. The report shall be submitted within 85 days following notification by the Secretariat that a vacancy exists or is about to occur. The Commission shall release its report to the public concurrently with submission of its report to the Governor.

(7) Each Commission shall, through the Secretariat, distribute informational and educational materials concerning judicial vacancies and the functions of the Commission in order to inform the public of the judicial selection process of the State.

F. Confidentiality of an individual who submits a personal data questionnaire to a Commission may not be made public by the Commission until after the closing date for the submission of questionnaires. The Secretariat may submit the names of those individuals to a bar association, on receiving satisfactory assurances that no committee or officer of the bar association will release or permit the release to the public of any ranking of the individuals by, or the results of any ballots returned from the members of, the bar association. Personal data questionnaire submitted to a Commission is confidential and may not be released by anyone other than the applicant, except that the Secretariat shall forward to the Governor the personal data questionnaires of those individuals actually nominated to the Governor by a Commission. The evaluation of candidates by a Commission, including interviews, deliberations and voting, is confidential and may not be disclosed to anyone other than the Governor.

G. Appointment.

(1) The Governor shall fill a judicial vacancy by selecting a person from the list of nominees submitted by the appropriate Commission.

(2) With respect to any judicial vacancy, the Governor may also fill the most recent judicial vacancy by selecting a person from any list previously submitted by the appropriate Commission for a judicial vacancy on the same court for which the current list is submitted, if the previous list was submitted within a 2-year period of the occurrence of the most recent vacancy and information on the nominees is updated.

H. Effective Date. For purposes of the election and appointment of individuals to serve on the Appellate and Trial Court Judicial Nominating Commissions, this Executive Order is effective immediately. Notwithstanding the

provisions of b(3) and c(3) of this order, existing judicial nominating commissions are hereby terminated and seventeen new judicial nominating commissions are created in accordance with the provisions of this order.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 31st day of March, 1999.

/s/ Parris N. Glendening
Parris N. Glendening
Governor

ATTEST:

/s/ John T. Willis
John T. Willis
Secretary of State



IN THE COURT OF APPEALS OF MARYLAND

REVISED ADMINISTRATIVE ORDER ADOPTING RULES OF PROCEDURE FOR THE APPELLATE AND TRIAL COURTS JUDICIAL NOMINATING COMMISSIONS

WHEREAS, Executive Order 01.01.1999.08 continues the process for nomination of judicial appointees through Appellate and Trial Courts Judicial Nominating Commissions and the requirement for operation of the Commissions in accordance with rules prescribed through Administrative Order; and

WHEREAS, It is appropriate to amend and re proclaim the extant rules governing operation of the Commissions, with changes appropriate to those changes effected by the Executive Order;

NOW, THEREFORE, I, Robert M. Bell, Chief Judge of the Court of Appeals, do on this 1st day of April, 1999, amend the Administrative Order dated May 23, 1995, effective immediately and applicable to any current or future vacancy.

1. (a) In this Order the following words have the meanings indicated.

(b) "Executive Order" means Executive Order 01.01.1999.08, as amended from time to time.

(c) "Secretariat" means the Administrative Office of the Courts.

2. (a) Upon notification by the Secretariat that a vacancy exists or is about to occur in a judicial office for which a commission is to make nominations, the Chairperson, in consultation with the Secretariat, shall establish:

(1) a closing date by which applicants for the office must file the personal data questionnaire or letter required under paragraph 3 of this Order; and

(2) a date for an initial commission meeting to consider nominations for the vacancy, which may not be sooner than

15 calendar days after the closing date.

(b) The Secretariat shall advise commission members of the date, place, and time of the meeting.

(c) (1) For the commission, the Secretariat shall notify the Maryland State Bar Association, Inc., and other appropriate bar associations and shall provide for appropriate newspaper notice of the existence of the vacancy and the closing date.

(2) In addition, the Chairperson or some other member designated by the commission, shall issue one or more press releases to one or more newspapers circulated within the appellate judicial circuit or commission district in which the vacancy exists. The press release should note the vacancy, explain the responsibilities and functions of the nominating commission, and note the closing date.

3. (a) Blank personal data questionnaires shall be made available through the Chairperson or any other commission member or by the Secretariat.

(b) Every completed questionnaire shall be filed with the Secretariat on or before a date specified as the closing date in the public notice advising of the vacancy.

(c) The Secretariat shall distribute to each commission member a copy of every questionnaire filed with the Secretariat by the closing date.

(d) An individual who reappplies to a commission with which the individual has filed a personal data questionnaire within 2 years immediately preceding the reapplication need not file a complete new questionnaire, but may submit by the closing date to the Secretariat a letter stating that the applicant is reapply-

ing and setting forth all changes that have occurred since the submission of the applicant's questionnaire. The Secretariat shall distribute these letters to the commission members in the same manner as questionnaires.

(e) After the closing date, for the commission, the Secretariat shall place, in at least one newspaper read by members of the general public, a notice listing the persons who have filed a questionnaire or letter as required under this paragraph and inviting submission, to the commission, of written and signed comments about those persons.

4. (a) Each commission shall evaluate every person who files a questionnaire or letter with the Secretariat as required in paragraph 3 (b) or (d) of this Order.

(b) A commission shall conduct personal interviews and any other investigation deemed necessary, as provided by the Executive Order.

(c) If a commission receives substantial adverse information about an applicant, the commission shall either inform the applicant of that information and give the applicant an opportunity to respond to it, or it shall ignore the adverse information in its evaluation of the applicant.

(d) At a meeting with the quorum and by balloting as required under the Executive Order, the commission shall select and nominate to the Governor the names of the persons it finds to be legally and most fully professionally qualified. In doing so, each commission member shall vote only for those persons believed to be legally and most fully professionally qualified. Voting by proxy or absentee ballot is not permitted.

(e) The results of the balloting shall be reported to the Governor, and disseminated to the public, as required in the Executive Order.

5. (a) A commission member

may not attend or participate in any way in commission deliberations respecting a judicial appointment if any applicant for the appointment is: (1) a near relative of the commission member by blood or marriage, or (2) a law partner, associate, employer, employee or other co-worker of the commission member.

(b) For the purpose of this rule, "a near relative by blood or marriage" includes a connection by marriage, consanguinity or affinity, within the third degree, counting down from a common ancestor to the more remote.

(c) If a commission member and an applicant for nomination to judicial office have a personal, business, professional, or political relationship which is substantial, although not as close as a relationship described in the preceding subsections of this rule, the commission member shall disclose the relationship to the other members of the commission present at the meeting to consider applicants. The extent of the disclosing commissioner's further participation in that meeting shall be determined by vote of a majority of the other commission members present at the meeting.

6. Other rules or regulations heretofore adopted by a judicial nominating commission remain in full force and effect except to the extent inconsistent with the foregoing regulations.

/s/ Robert M. Bell
Robert M. Bell
Chief Judge

Filed: /s/ Alexander L. Cummings
Alexander L. Cummings
Clerk
Court of Appeals

COURT OF APPEALS OF MARYLAND

APPELLATE AND TRIAL COURTS JUDICIAL SELECTION REGULATIONS

WHEREAS, Executive Order 01.01.1999.08 continues the Appellate and Trial Courts Judicial Nominating Commissions system but abolishes the current commissions; and

WHEREAS, Under the Order, new commissions are to be constituted, with seven members of the Appellate Judicial Nominating Commission and four members of each Trial Courts Judicial Nominating Commission to be lawyers elected by members of the Maryland Bar; and

WHEREAS, The procedures for election of such members are to be specified by rule of this Court;

NOW, THEREFORE, it is this 1st day of April, 1999, ORDERED by the Court of Appeals of Maryland that, effective this date, all previously adopted regulations relating to membership on judicial nominating commissions are rescinded and the following regulations for selection of lawyer members of the appellate and trial courts judicial nominating commissions are adopted:

I. Definitions

In these regulations, the following words have the meanings indicated.

"Appellate Commission" means the Appellate Judicial Nominating Commission created by the Executive Order.

"County member" means a trial courts commission member deemed to represent a particular county in a multicounty commission district by virtue of the member's principal office being located in that county.

"Elected member" means a lawyer member of a judicial commission, other than a member appointed by the Governor.

"Executive Order" means Executive Order 01.01.1999.08, as amended from time to time.

"Judicial Commission" means either the Appellate Commission, or a trial courts commission, or both, according to context.

"Lawyer" means an individual who is a member in good standing of the Bar of this State and who is a member, including a voluntary member, of the Clients' Security Trust Fund and current in payments to the Fund.

"Principal office" means an office which is maintained for the practice of law and in which a lawyer, either as proprietor (alone or in partnership), or as an employee of such proprietor or of an agency of government or of a business or other nongovernmental concern, organization or association, usually devotes the majority of time to the practice of law during ordinary business hours in the traditional work week. A lawyer shall be deemed to be "in" such an office even though the lawyer is temporarily absent therefrom in the performance of duties of a law practice actively conducted from that office.

"Secretariat" means the Administrative Office of the Courts.

"Trial courts commission" means a trial courts judicial nominating commission created by the Executive Order.

II. Appellate Judicial Nominating Commission

1. Allocation of Elected Member Positions.

There shall be one elected member of the Appellate Commission from each of the seven appellate judicial circuits.

2. Eligibility to Vote.

Any lawyer who maintains a principal

office in this State and is a qualified voter of this State is eligible to vote for the member of the Appellate Commission to be elected from the appellate judicial circuit in which the lawyer either resides or maintains a principal office, but no lawyer may vote in more than one appellate judicial circuit.

3. Eligibility as Elected Member.

Any lawyer who meets the eligibility requirements under the Executive Order is eligible to serve as the Appellate Commission member elected from the appellate judicial circuit in which the lawyer either resides or maintains a principal office.

4. Nominations.

(a) Nomination for elected member of the Appellate Commission shall be by written petition filed with the Secretariat.

(b) Each petition shall state the name of the nominee and the appellate judicial circuit from which the nominee seeks election and shall be signed by at least 15 lawyers, other than the nominee. Each signatory must be eligible to vote for the nominee and must maintain a principal office in the appellate judicial circuit from which the nominee is being nominated.

(c) The nominee shall verify in the petition the nominee's: status as a qualified voter; home and principal office addresses; status as a lawyer; status as not holding an office of profit or trust or an office in a political party; firm or legal office; and intent to serve if elected.

(d) Each signatory shall verify in the petition the signatory's: status as a qualified voter; and principal office address and appellate judicial circuit location.

(e) A lawyer may not be nominated in the same election from more than one appellate judicial circuit or for both the appellate and trial courts nominating commissions.

5. Ballots and Eligibility Cards.

(a) As soon as practicable after the close of nominations under Paragraph 17, the Secretariat shall prepare ballots for appellate judicial circuits in which there are contested elections and shall mail or deliver ballots for a circuit and eligibility cards to lawyers shown on the Clients' Security Trust Fund list to be within that circuit.

(b) Ballots shall list the nominees in each appellate judicial circuit in alphabetical order.

(c) Ballots shall contain a block printed next to the name of each nominee, to be used in voting; shall set forth the date of the mailing by the Secretariat; and shall contain instructions consistent with Paragraph 6.

(d) Eligibility cards shall contain a legend and signature line for voters to use in verification of their eligibility.

6. Voting.

(a) Each voter may vote for one nominee from the appellate judicial circuit in which the voter either resides or maintains a principal office.

(b) A voter shall mark the block next to the name of the nominee for whom a vote is being cast. No write-in voting is permitted.

(c) To be valid both (1) a voter's ballot, enclosed in a plain sealed envelope, and (2) an eligibility card, signed by the voter, must be received by the Secretariat at the close of business within 15 days after the date of mailing marked on the ballot.

7. Elections.

(a) Subject to subparagraphs (b) and (c), the position of elected member from an appellate judicial circuit shall be filled by the sole nominee from that circuit or, if there is more than one nominee, by the nominee who

receives the highest number of votes of all votes cast by eligible voters.

(b) In the event of a tie vote between two or more nominees from the same circuit, the elected member shall be chosen by lot from among the nominees so tied, in accordance with procedures prescribed by the Secretariat.

(c) In the event that two or more lawyers from the same firm or legal office would otherwise be elected to the Appellate Commission, only the lawyer with the highest number of votes is elected, and the other lawyers from the same firm or legal office are disqualified. Instead of a disqualified lawyer, the lawyer with the next highest number of votes shall be deemed elected in accordance with subparagraph (a) or (b) of this paragraph.

8. Vacancies.

(a) In the event of a vacancy among the elected members of the Appellate Commission, its lawyer members and Chairperson shall fill the vacancy by choosing by majority vote a lawyer who meets the eligibility requirements under Paragraph 3.

(b) A member chosen under this Paragraph serves only for the rest of the term and until a successor is elected, unless removed automatically under the Executive Order for failure to attend meetings.

III

Trial Courts Judicial Nominating Commissions

9. Allocation of Member Positions.

(a) There shall be four elected members of each trial courts commission.

(b) In multicounty commission districts, there shall be at least one county member for each county for which a nominee qualifies under Paragraph 11.

10. Eligibility to Vote.

Any lawyer who maintains a principal office in this State and is a qualified voter of this State is eligible to vote for all of the elected members of the trial courts commission to be elected from the commission district in which the lawyer maintains a principal office.

11. Eligibility as Elected Member.

Any lawyer who meets the eligibility requirements under the Executive Order is eligible to serve as a trial courts commission member elected from the commission district in which the lawyer maintains a principal office.

12. Nominations.

(a) Nomination for elected member of a trial courts commission shall be by written petition filed with the Secretariat.

(b) Each petition shall state the name of the nominee and the commission district from which the nominee seeks election and shall be signed by at least 15 lawyers, other than the nominee. Each signatory must be eligible to vote for the nominee. In commission districts 1, 2, 5, 12, and 16, at least three signatories must maintain a principal office in a county other than that where the nominee maintains a principal office.

(c) The nominee shall verify in the petition the nominee's: status as a qualified voter; home and principal office addresses; status as a lawyer; status as not holding an office of profit or trust or an office in a political party; firm or legal office; and intent to serve if elected.

(d) Each signatory shall verify in the petition the signatory's: status as a qualified voter; and principal office address and county.

(e) A lawyer may not be nominated in the same election from more than one commission district or for both the appellate and trial courts nominating commissions.

13. Ballots and Eligibility Cards.

(a) As soon as practicable after the close of nominations under Paragraph 17, the Secretariat shall prepare ballots for commission districts in which there are contested elections and shall mail or deliver ballots for a district and eligibility cards to lawyers shown on the Clients' Security Trust Fund list to be within that district.

(b) The ballots for commission districts 1, 2, 5, 12, and 16 shall group the nominees according to the county in which the nominees maintain their principal office and list the nominees in each grouping in alphabetical order. The ballots for the other commission districts shall list the nominees in alphabetical order.

(c) Ballots shall indicate when an election of a nominee is not contested.

(d) Ballots shall contain a block printed next to the name of each nominee whose election is contested, to be used in voting; shall set forth the date of the mailing by the Secretariat; and shall contain instructions consistent with Paragraph 14.

(e) Eligibility cards shall contain a legend and signature line for voters to use in verification of their eligibility.

14. Voting.

(a) As a condition of the validity of a ballot and subject to subparagraph (b), a voter must vote:

(1) in commission districts 1, 2, 5, 12, and 16, for four nominees, with at least one from each grouping of nominees by county; and

(2) in the other commission districts, for four nominees.

(b) The minimum number of votes under subparagraph (a) shall be reduced by one for each county grouping for which there is no nominee or for which election of the nominee is not contested.

(c) A voter shall mark the block next to the name of each nominee for whom a vote is being cast. No write-in voting is permitted.

(d) To be valid, both (1) a voter's ballot, enclosed in a plain sealed envelope, and (2) an eligibility card, signed by the voter, must be received by the Secretariat at the close of business within 15 days after the date of mailing marked on the ballot.

15. Elections.

(a) Subject to subparagraph (d), the positions of elected members on a trial courts commission for a multicounty commission district shall be filled as follows:

(1) by the sole nominee for a county grouping or, if there is more than one nominee in a county grouping, by the nominee with the highest number of all votes casts for nominees in that grouping; and

(2) for each position not filled under item (1) the nominee who, among the remaining nominees, receives the highest number of all votes cast.

(b) Subject to subparagraph (d), the positions of elected members on a trial courts commission for a single-county commission district shall be filled starting with the nominee who receives the highest number of all votes casts for nominees in that district and continuing successively with the nominee receiving the next highest number, until the positions are filled.

(c) In the event of a tie vote between two or more nominees from the same district or a county within a district, the elected member shall be chosen by lot from among the nominees so tied, in accordance with procedures prescribed by the Secretariat.

(d) In the event that two or more lawyers from the same firm or legal office would otherwise be elected to the same trial courts commission, only the lawyer with the

highest number of votes is elected, and the other lawyers from the same firm or legal office are disqualified. Instead of a disqualified lawyer, the lawyer with the next highest number of votes shall be deemed elected in accordance with subparagraph (a), (b) or (c) of this paragraph.

16. Vacancies.

(a) In the event of a vacancy among the elected members of a trial courts commission, its lawyer members and Chairperson shall fill the vacancy by choosing by majority vote a lawyer who meets the eligibility requirements under Paragraph 11 and the residency requirement, if any, satisfied by the lawyer's predecessor.

(b) A member chosen under this Paragraph serves only for the rest of the term and until a successor is elected, unless removed automatically under the Executive Order for failure to attend meetings.

**IV.
General Provisions**

17. Closing Date for Nominations.

In elections for judicial commissions, the deadline for the filing of nominating petitions is 5:00 p.m. on May 3, 1999.

18. Lack of Nomination.

If no valid nomination for an elected member has been received by the Secretariat by the closing date under Paragraph 17, the Court of Appeals shall fill the position by appointment of a lawyer who meets the eligibility requirements for that position.

19. Certification.

The Secretariat shall supervise tabulation of the ballots and shall certify the results to the Governor. To ensure satisfaction of the residency requirement for commission district members, the certification shall include the resident addresses of such members. In the

event that fewer than two elected members are residents of a commission district, the Governor shall make appointments to satisfy the residency requirement under the Executive Order.

20. Retention and Inspection of Ballots and Cards.

(a) The Secretariat shall keep the ballots and eligibility cards for at least six months after the deadline for their receipt and, after six months, may dispose of the ballots and cards as allowed by law for disposition of public records.

(b) No one other than authorized personnel of the Secretariat may inspect a ballot or eligibility card until after certification of the results. After certification, access shall be in the manner provided for inspection of public records.

21. Interpretation.

In all matters pertaining to the interpretation and implementation of these regulations or the elections held pursuant to them, the determination and decisions of the Secretariat shall be final and binding.

AND IT IS FURTHER ORDERED, That these regulations shall be filed with the Clerk of the Court of Appeals and the Secretariat shall keep copies of them on file and shall have them published and distributed as it may deem appropriate and expedient;

AND IT IS FURTHER ORDERED, That the elections shall be conducted in accordance with these regulations.

/s/ Robert M. Bell

/s/ John C. Eldridge

/s/ Lawrence F. Rodowsky

/s/ Howard S. Chasanow

Filed: /s/ Alexander L. Cummings
Alexander L. Cummings
Clerk
Court of Appeals of Maryland

Appendix 2

Roster of Appellate and Trial Court Judicial Nominating Commissions

Appellate Judicial Nominating Commission

Hon. Harry R. Hughes, Chair
24800 Tealiquor Road
Denton, Maryland 21629

First Appellate Circuit

Peter Ayers Wimbrow, III, Esq.
4100 Coastal Highway
Ocean City, Maryland 21842

James L. Crothers
7272 Waverly Island Road
Easton, Maryland 21601

Second Appellate Circuit

Augustus F. Brown, Esq.
200 S. Main Street
Bel Air, Maryland 21014

James R. DeJuliis
11337 Knotchcliff Road
Glen Arm, Maryland 21057

Third Appellate Circuit

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Appendix 3

Sample Announcement and Notice of Vacancy

ANNOUNCEMENT

Trial Courts Judicial Nominating Commission
for Commission District ____

Circuit Court for _____

The Honorable _____ will retire on _____ thereby creating a vacancy on the Circuit Court for _____, effective that date. This vacancy is to be filled by appointment by the Governor.

Any lawyer or judge interested in appointment to this vacancy should contact Michael V. O'Malley, Administrative Office of the Courts, Robert C. Murphy Courts of Appeal Building, Annapolis, Maryland, 21401, tel: (410) 260-1422 or Maryland Relay Service (TT/Voice) (800) 735-2258. The personal data questionnaire is also available (as a downloadable WP document) on the Judiciary's Home Page at www.courts.state.md.us.

The completed personal data questionnaire and two writing samples *must be* received in the Administrative Office of the Courts by close of business (5:00 p.m.) on _____.

Appendix 4

Sample Personal Data Questionnaire

QUALIFICATIONS OF A MARYLAND JUDGE

The qualifications of a judge falls into two quite distinct categories: (1) legal and (2) professional and personal.

The Constitution of Maryland specifies those in the first category (Art. I, § 12; Art. IV, § 2). The legal qualifications for appointed judges are:

1. U.S. and Maryland citizenship.
2. Registration to vote in State elections at the time of appointment.
3. Residence in the State for at least five years.
4. Residence, for at least six months next preceding appointment, in the geographic area where the vacancy exists.
5. Age of at least 30 at the time of appointment.
6. Membership in the Maryland Bar.

The Constitution also speaks generally of the second category of qualifications, by providing that those selected for judgeships shall be lawyers "most distinguished for integrity, wisdom and sound legal knowledge."

The submission of this information is voluntary and will be kept confidential and used only for statistical reports.

I am a resident of County/City

Race: ☐ White ☐ Asian or Pacific Islander
☐ Black ☐ Hispanic
☐ American Indian or Alaskan Native

Sex: ☐ Male ☐ Female

COURT FOR WHICH YOU ARE APPLYING: ☐ Court of Appeals
☐ Court of Special Appeals
☐ Circuit Court
☐ District Court

Are you currently employed, in a legal capacity, by government? ☐ Yes ☐ No

If yes, please complete the following:

☐ Federal ☐ State ☐ Local Government ☐ Full-time ☐ Part-time

Agency Name:

NOT FOR DISTRIBUTION
(ONLY ONE COPY OF THIS PAGE IS NECESSARY)

CONFIDENTIAL PERSONAL DATA QUESTIONNAIRE

You are requested to provide the information called for in this questionnaire in complete detail.

Indicate Court for Which You Are Applying

Last Name First Middle

Social Security Number:

Are you a citizen of Maryland? ☐ Yes ☐ No

Are you registered to vote in state elections in Maryland? ☐ Yes ☐ No

What is the longest period during which you resided in Maryland continuously?

From _____
Month Day Year

To _____
Month Day Year

Date and Place of Birth: _____
Mo. Day Yr. City State/Country

Are you a member of the Maryland Bar in good standing? ☐ Yes ☐ No

NOTICE TO APPLICANTS FOR JUDICIAL APPOINTMENT

Neither a Commission nor the Secretariat (Administrative Office of the Courts) will publish the name of any individual who submits a personal data questionnaire to the Commission until after the closing date for the submission of questionnaires.

The personal data questionnaire that an applicant submits to a Commission is confidential. If you are nominated, the Secretariat (AOC) will forward a copy of your questionnaire to the Governor but, except as required by law, neither the Commission nor the Secretariat (AOC) will release the questionnaire to anyone else without your written permission. Therefore, if you wish to have your questionnaire released to a bar association or other organization, you must check the appropriate block(s) on page 2 and submit one additional copy of the questionnaire and writing samples (if required) for each organization to which it is to be sent.

If the Commission considers the information about you to be incomplete or otherwise inadequate for suitable evaluation of your qualifications, the Commission may ask you to provide, either in written form or by personal appearance, the additional information that the Commission considers appropriate to allow suitable evaluation.

Statements that you make to the Commission, personally or in documents submitted to the Commission, are subject to verification by any method that the Commission considers appropriate.

(Please complete and attach this page to your responses to each questionnaire.)

I authorize transmittal of a copy of this questionnaire to: (check appropriate blocks).

- ☐ J. Franklyn Bourne Bar Association
- ☐ Maryland Association of Defense Trial Counsel
- ☐ Maryland Hispanic Bar Association
- ☐ Maryland State Bar Association
- ☐ Monumental City Bar Association
- ☐ Women's Bar Association
- ☐ _____ City/County Bar Association
- ☐ Any Other _____

(See Maryland Lawyer's Manual under Local/Specialty Bar Associations)

* * * * *

I submit the following data to the Judicial Nominating Commission and understand that it is subject to verification by the Commission. I authorize any person or custodian of records, including, without limitation, the Commission on Judicial Disabilities, the Attorney Grievance Commission, and the Clients' Security Trust Fund, to release to the Commission any and all information that may be available concerning me.

Should I be favorably considered, I will accept appointment to the Court indicated.

Date of Application

Full Name of Applicant (Signed)

Full Name of Applicant (Printed)

NOTE: Please return an original and 16 copies (20 copies for Appellate vacancies) of the completed personal data questionnaire, plus an additional copy for each organization to which you wish a copy to be sent. Applicants for Appellate and Circuit Court vacancies must submit two writing samples with each questionnaire. The major portion of the writing samples and related research must be that of the applicant. If written documents are co-authored, please indicate which portion is attributable to another author. If writing samples are required, send copies of both writing samples with each questionnaire.

Please Remit to:

Administrative Office of the Courts
Robert C. Murphy Courts of Appeal Building, 3rd Floor
361 Rowe Boulevard
Annapolis, MD 21401
(410) 260-1401 - Baltimore Area
(800) 735-2258 - Maryland Relay Service (TT/Voice)

Please furnish responses to the following questions or items on separate letter-size paper. Repeat each question or item and place your response immediately beneath it.

GENERAL

1. List each name that you have used previously.
2. List your office address, with zip code, telephone number and area code. Include the name of your law firm, if you are associated with one.
3. List, with inclusive dates, your home address, telephone number and area code, and each other place of residence since your admission to the Maryland Bar.
4.
 - a. Are you a U.S. Citizen?
 - b. Are you a naturalized citizen? If so, give the date and place of naturalization.
5. Family Status:
 - a. Are you married? If so, state the date of your marriage and your spouse's full name, including maiden name, if any, and occupation.
 - b. Have you been divorced? If so, give the name(s) of each former spouse.
 - c. Give the names of your children, if any, with age, address, and occupation of each.
6. Have you had any military service? If so, provide the dates of service, the branch, the highest rank attained and the form of discharge or release.
7. List any avocational interests and hobbies.

EDUCATION

8. For each college, graduate school, and law school you attended, list the names and addresses, the dates of attendance, and the degree awarded or, if no degree was awarded from that institution, the reason for leaving the college or school.
9. State the significant activities in which you took part during the period of your attendance at college, graduate school and law school, giving dates of these activities and any offices or leadership positions you held.
10. Briefly describe your continuing legal/judicial education during the past five years.

11. Have you taught any courses on law or lectured at bar association conferences, educational institutions, or continuing legal/judicial education programs? If so, briefly describe each.
12. List all published books or articles you have written, giving citations and dates of publication.

LAW PRACTICE

13. Indicate the date of your admission to the Maryland Bar (Court of Appeals) and to each other court in which you are currently admitted to practice.
14. Describe chronologically your law practice and experience after your graduation from law school, including, but not limited to, the following items:
 - Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates you were a clerk.
 - Whether you practiced alone, and if so, the addresses and the dates.
 - The names and addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the dates and nature of your connection with each.
 - The reasons for termination of employment and/or practice and any other relevant details.
15.
 - a. What has been the general character of your practice? If its character has changed over the years, divide your description into periods with dates.
 - b. Describe your typical clients, and mention the areas, if any, in which you have specialized?
16. With respect to the last five years:
 - a. Did you appear in court regularly, occasionally, or not at all? If the frequency of your appearances in court has varied during this period, please describe.
 - b. What percentage of your appearances was in the following courts?
 1. Federal Appellate Courts.
 2. Other Federal Courts.
 3. State Appellate Courts.
 4. State Circuit Courts.
 5. The District Court of Maryland.
 6. Other (Specify).

- c. What percentage of your litigation was
1. Civil?
 2. Criminal?
- d. State the number of cases you tried to verdict or judgment (rather than settled) and indicate whether you were sole counsel, chief counsel, or associate counsel.
- e. What percentage of these trials was
1. Jury?
 2. Non-jury?
- f. Approximately what percentage of your cases were you successful in resolving short of filing suit or trial?
- g. If engaged in a non-litigation practice in whole or in part, what percentage of your time was in the following areas?
- | | |
|-----------------------|-----------------------|
| 1. General business | 5. Administrative |
| 2. Commercial | 6. Domestic Relations |
| 3. Estates and Trusts | 7. Juvenile Matters |
| 4. Real Estate | 8. Other (Specify) |

17. Indicate as to the period preceding the last five years:

- a. Whether your appearances in court were more or less frequent than during the past five years.
- b. Any significant changes in the percentages stated in answer to question 16 b, c, e, f, and g.
- c. Any significant changes in the number of cases you tried to verdict or judgment (rather than settled), as sole counsel, chief counsel, or associate counsel.
- d. Any significant increase in the percentage of matters you have referred for Alternative Dispute Resolution ("ADR"), including mediation and arbitration, or that you have settled short of trial or of filing suit?

18. Identify three of the most significant cases you have ever handled that went to trial, identifying the Judge who tried the case, opposing counsel, the place where it was tried, the major points at issue in the litigation, and the result, and describe your participation in the case.

19. List all memberships in bar associations of any type or jurisdiction, including dates of membership, offices or positions held, with dates of participation, and any other matters you consider of particular significance.

20. List all professional honors, awards, or other forms of recognition which you have received.

BUSINESS AND CIVIC INVOLVEMENT

21. Have you ever engaged in any business or profession other than the practice of law? If yes, state the name of the business or employer and the dates of service and briefly describe the nature of the business or profession and the reason for leaving.
22. Are you now an officer or director or otherwise engaged in the management of any business enterprise? If so, provide details as to the nature of the business, the nature of your duties and the term of your service. Is it your intention to resign these positions and withdraw from participation in the management of these enterprises if you are nominated and appointed? If not, explain.
23. Have you ever held a judicial or quasi-judicial office? If yes, please provide the name of the court and the period of service.
24. List all nonjudicial public offices, elected or appointed, you now hold or have held in the past. If currently held, would you be willing to resign from these positions? If not, explain.
25. List all civic activities in which you have taken part, giving the dates of participation and any offices or leadership positions you have held.
26. List all other charitable, educational, fraternal or sororal, recreational, or religious organizations, trade groups, professional societies (other than bar associations), and similar groups of which you now or have ever been a member and give the dates of membership and the titles of the offices, if any, that you held.
27. List all awards or recognition you have received not listed in question 20.

CONDUCT

28. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation or ordinance? If so, provide details. DO NOT include motor vehicle offenses for which a fine of \$50.00 or less was imposed.
29. Give particulars of any litigation, including divorce, in which you personally are now or previously have been either a plaintiff or defendant. For each, list dates, the names of the moving parties, the number of the case, the court, and the grounds for the litigation.
30. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct or have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group, including without limitation, the Commission on Judicial Disabilities, the Attorney Grievance Commission, or the Clients' Security Trust Fund? If so, provide details, including final disposition of the matter.

31. Has a complaint on the basis of racial, sexual, national origin, disability or religious discrimination ever been filed against you. If so, please explain.
32. Is there any other information concerning your background that might be considered detrimental or that otherwise should be taken into consideration by the Commission in evaluating your application? If so, provide details, including a description of each incident with relevant dates, names and addresses.

GENERAL

33. List the names, business addresses and business telephone numbers of at least three individuals who are familiar with your professional qualifications and who have known you for more than the last five years. *(NOTE: AN APPLICANT SHOULD NOT USE THE NAME OF A MEMBER OF THE NOMINATING COMMISSION AS A REFERENCE.)*
34. Is this the first time you have applied for a judicial vacancy? If not, for each of your prior applications state the dates, the judicial office and whether you were nominated, appointed, not nominated or not appointed.
35. Have you filed all federal and state tax returns that are now due or overdue and are all payments thereon up to date? If not, explain. Has a lien or other collection procedure ever been instituted against you by federal, state or local authorities. If so, explain.
36. Do you have a professional, business, consanguineous, or personal relationship with any member of the Judicial Nominating Commission that may interview you for this vacancy? If so, provide dates and a description of this relationship?
37. During the preceding five years, have you belonged to a club or organization (other than a religious organization) that discriminates against or excludes persons on the basis of race, sex, religion, national origin or disability? If so, please explain.
38. In conclusion, is there anything additional in your background that the Commission should consider in evaluating your qualifications to be nominated for this vacancy?

Appendix 5

Sample Interview Questions

SUGGESTED INTERVIEW QUESTIONS FOR JUDICIAL CANDIDATES

Why do you want to be a judge?

What do you think are the most important attributes of a judge?

What unique qualifications or experiences do you have that would make you a good judge?

How would you describe your temperament?

What specific experience can you point to that demonstrates your sensitivity and or understanding of the community in which you work?

What is your greatest strength and how would that impact on your duties as a judge?

What is your greatest weakness and how would that impact on your duties as a judge?

What kinds of cases are you most interested in hearing?

What kinds of cases are you least interested in hearing?

What most interests you about the possibility of being a judge?

What have you done in your legal career about which you are most proud?

Who is one of your judicial role models and why?

Assume you are presiding over a case which involves an experienced lawyer and an obviously inexperienced one. The inexperienced lawyer is having trouble having an important item of evidence admitted. What would you do?

If, as a judge, you were confronted with a case that involved a problem that you were not comfortable or familiar with, what would you do?

How would you improve the Maryland Judicial System as it now exists?

What elements in your training, background and experience have prepared you to deal with questions of legal rights for women and minorities?

Do you believe that someone who belongs to an organization that discriminates on the basis of race, sex, religion or national origin should resign from the organization before appointment to the bench?

Are you or have you been a member of any private clubs or organizations that exclude women or minorities?

Do you think that a judge has an obligation to intervene if he or she witnesses incidents of discrimination or debasing behavior against women or minority members in the court room or chambers?

Do you believe that there is currently a problem in the Courts with gender bias?

Have you paid all Social Security and/or other taxes for your housekeeper or maid?

Have you ever been the subject of disciplinary action?

Do you feel you could support yourself and your family adequately on a judge's pay?

Is there anything about yourself that would cause you or this Commission embarrassment if we were to give you a favorable recommendation?

In what pro bono or civic organizations are you involved? How do you feel about mandatory pro bono service for attorneys?

Have you had any experience trying or litigating domestic violence and sexual offense cases? Do you have any observations regarding the way these cases are handled?

What is your background in criminal law? Have you had any experience in defending or prosecuting criminal cases?

What continuing legal education have you undergone in the last five years? How do you keep up to date with changes in the law?

How many cases have you actually tried in the past five years?

What do you believe should be the limitations on the voir dire process? Do you believe voir dire should be extremely limited or liberally permitted?

Do you believe issues of race or gender have a role in the voir dire process?

What is your opinion of the purpose of punishment for a criminal offense?

Do you believe a judge has a role in making new law in the course of ruling on cases?

Do you feel that there are times when the technical rules of law should yield to common sense and natural justice? If so, when?

Do you have any ideas about how to make the judicial process operate more efficiently?

Have you read the Canons and Rules of Judicial Ethics? Do any of their provisions give you difficulty or concern?

Do you have any health problems that would prohibit you from effectively carrying out the responsibilities of a judge?

*The Baltimore County Bar Association, The Bar Association of Baltimore City, The Carroll County Bar Association, The Honorable Barbara Kerr Howe, The Maryland Criminal Defense Attorney's Association, The Maryland Bar Association, The Monumental Bar Association, The Office of the Public Defender, The Select Committee

on Gender Equality, The Women's Law Center, and The Women's Bar Association of Maryland contributed questions to this manual.

Appendix 6

Qualifications of Judges

Qualifications of Judges

The qualifications of a judge fall into two quite distinct categories: (1) legal, and (2) professional and personal.

The Constitution of Maryland specifies those in the first category (Art. I, § 12; Art. IV, § 2). The legal qualifications for appointed judges are:

1. U.S. and Maryland citizenship.
2. Registration to vote in State elections at the time of appointment.
3. Residence in the State for at least five years.
4. Residence, for at least six months next preceding appointment, in the geographic area where the vacancy exists. (Note: In the case of those judges of the Court of Special Appeals appointed from the State at large, apparently only the residence requirement of five years in the State applies).
5. Age of at least 30 at the time of appointment.
6. Membership in the Maryland Bar.

The Constitution also speaks generally of the second category of qualifications, by providing that those selected for judgeships shall be lawyers "most distinguished for integrity, wisdom and sound legal knowledge". As to these more subjective



qualities, the American Bar Association has this to say:

1.21 Selection of Judges. Persons should be selected as judges on the basis of their personal and professional qualifications for judicial office. Their concept of judicial office and views as to the role of the judiciary may be pertinent to their qualification as judges, but selection should not be made on the basis of partisan affiliation.

(a) Personal and professional qualifications. All persons selected as judges should be of good moral character, emotionally stable and mature, physically able to discharge the duties of office, patient, courteous, and capable of deliberation and decisiveness when required to act on their own reasoned judgment. They should have a broad general and legal education and should have been admitted to the bar. They should have had substantial experience in the practice, administration, or teaching of law for a term of years commensurate with the judicial office to which they are appointed. In addition to these qualifications:

(i) Trial judges. Persons selected as trial judges should have had substantial experience in the adversary system, preferably as judges or judicial officers in other trial courts, or as trial advocates, and in any event should have had experience in the preparation, presentation, or decision of legal argument and matters of proof according to rules of procedure and evidence.

(ii) Appellate judges. The selection of appellate judges should be guided by the aim of having an appellate bench composed of individuals having a variety of practical and scholarly viewpoints, including some with substantial experience as a trial judge. Persons selected as appellate judges preferably should have high intellectual gifts and experience in developing and expressing legal ideas and facility in exchanging views and adjusting differences of opinion.

-Standard 1.21(a), *ABA Standards Relating to Court Organization* (1990).

In commenting on this Standard, the ABA adds:

Judges should be selected on the basis of their personal and professional qualifications. Their political views and loyalty or service to party should be disregarded. While it is appropriate to consider their concept of judicial office itself, candidates for the judiciary should be evaluated in this respect according to whether they can apply the law with a disinterested concern for justice for all.

Judges should have superior self-discipline, moral courage, and sound judgment. They should be able to listen readily to others and to be detached, evenhanded, and decisive. They should have a breadth of education sufficient to understand the variety of problems that come before the courts. They should be professionally qualified as lawyers so that they can interpret and apply the law competently. They should have had experience in making practical and critical judgments concerning human relations.

A judge should be mentally fit and alert and be physically capable of performing the duties of the office. Consideration should be given to age, both as it related to professional maturity and to the years he can devote to judicial service before reaching the age of retirement. It should become a regular part of the process of selecting a judge that an up-to-date medical report be available to the nominating commission.

A person selected as a trial judge should have had previous experience in that capacity, as a judicial officer, or as a trial advocate before courts or administrative tribunals. Experience as an advocate trains the judge in the rules of procedure and evidence, provides awareness of the problems and responsibilities of the trial lawyer, and provides exposure to models of judges. Experience as an advocate however is neither indispensable nor always sufficient preparation for being a judge. It is especially appropriate to promote to higher judicial office judges, court commissioners, and other judicial officers who have shown outstanding competence.

An appellate judge should be familiar with the process of decision making, including the trial process which an appellate

judge is called on to review. An appellate judge should have the ability to develop and present legal ideas, to give genuine consideration to views with which the judge does not initially agree, and to write clearly and incisively, for this is the process of decision making in an appellate court. At the same time, an appellate court should reflect a broad spectrum of professional, intellectual, and civic experience to facilitate its function in developing the law.

...

-Commentary to Standards 1.21(a).

Other suggestions as to judicial qualities or qualifications may be derived from the Evaluation Scale contained in Appendix 7.

Appendix 7

Sample Evaluation Scale

SAMPLE EVALUATION SCALE OF JUDICIAL APPLICANTS*

1. a. Does the applicant inspire your confidence
 in his/her personal honesty, integrity and
 moral courage?..... 20 points
- b. Does the applicant have a good reputation
 (in community and in the profession) for
 character and integrity?..... 20 points
2. Is the applicant open-minded, impartial and
 fair?..... 30 points
3. Does the applicant have a strong commitment to
 equal justice for all, regardless of race,
 religion, or sex?..... 25 points
4. Will the applicant be free from influences by
 eminence of counsel?..... 15 points
5. Will the applicant abstain from politics in
 the performance of his/her judicial duties..... 15 points
6. Will the applicant conduct his/her office with
 appropriate dignity?..... 15 points
7. Will the applicant be courteous, considerate,
 and patient when dealing with counsel,
 litigants, and witnesses?..... 15 points
8. Will the applicant be prompt and industrious
 in the performance of his/her judicial duties?..... 15 points
9. a. Does the applicant have wide-ranging
 analytical powers?..... 15 points
- b. Has the applicant mastered (or does
 he/she have the intellectual capacity to
 master) the intricacies of legal procedure?..... 15 points

Applicants for Trial Judgeship

- c. Does the applicant possess unusual ability to discern facts and weigh conflicting testimony..... 10 points
- d. Will the applicant be skillful in communicating with jurors and witnesses?..... 10 points

Applicants for Appellate Judgeship

- c. Does the applicant stay abreast of developments in the law?..... 10 points
- d. Will the applicant be skillful in writing opinions?..... 10 points
- 10. Does the applicant have sufficient actual expertise in the practice of law?..... 15 points
- 11. ...
- 12. Is the applicant well-educated and well-informed generally?..... 10 points
- 13. Has the applicant had previous successful judicial service?..... 10 points
- 14. Regardless of the applicant's particular strengths or weaknesses (whether or not reflected in the above ratings), do you think he/she has an overall potential to become a highly capable judge?..... 30 points

*Taken from Allan Ashman and James J. Alfini, *The Key to Judicial Merit Selection: The Nominating Process* (Chicago: AJS, 1974) pp. 232-233.

Appendix 8

The Maryland Judicial System

THE COURTS AND THEIR JURISDICTIONS

The Judicial Branch of the State of Maryland is divided into four distinct court levels, each of which has a defined function. There are two appellate courts, the Court of Appeals and the Court of Special Appeals. The Appellate Judicial Nominating Commission has the task of selecting the most qualified candidates for vacancies on the appellate courts.

There are also trial courts of general jurisdiction: the circuit courts for each county and Baltimore City. And then there is the District Court of Maryland, a statewide trial court of limited jurisdiction. The Trial Courts Nominating Commissions select the most qualified candidates for vacancies on the two trial courts.*

The Court of Appeals

The Court of Appeals of Maryland is the highest tribunal in the State of Maryland and was created by the Constitution of 1776. The Court sits in Annapolis.

The Court currently is composed of seven members, one from each of the Appellate Judicial Circuits. Members of the Court, after initial appointment by the Governor, and confirmation by the Senate, are elected to ten-year terms of office. By a constitutional amendment ratified in 1976, judges of the Court of Appeals run for office on their records, without opposition. If the voters reject the retention in office

*In each county except Harford and Montgomery, the administration of decedents' estates is handled in a court called the Orphans' Court. The judges of these courts may be lay people. They are elected for four-year terms. They do not apply to nominating commissions.

of a judge, or if the vote is tied, that office becomes vacant and must be filled by a new appointment. The Chief Judge of the Court of Appeals is designated by the Governor and is the constitutional administrative head of the Maryland judicial system.

By legislation effective January 1, 1975, the Court of Appeals hears cases almost exclusively by way of certiorari. This means that, as a general rule, it may decide which cases it wants to hear. This is intended to permit the Court to give its full attention to the most important and far-reaching matters. The Court may review a case decided by the Court of Special Appeals or may bring up for review cases filed in that court before they are decided there. The Court of Appeals may also review certain decisions rendered at the circuit court level if those courts have acted in an appellate capacity with respect to appeals from the District Court.

The Court is empowered to adopt rules of judicial administration, practice and procedure, which have the force of law. It also admits persons to the practice of law, reviews recommendations of the State Board of Law Examiners, and conducts disciplinary proceedings involving members of the Bar.

The Court of Special Appeals.

The Court of Special Appeals is Maryland's intermediate appellate court and was created in 1966 as the result of an increasingly-overwhelming caseload in the Court of Appeals, which had caused that Court to develop a substantial backlog.

The Court of Special Appeals sits in Annapolis and, although it was originally composed of five judges, now consists of 13 members. Legislation enacted in 1994 and contingent on a Constitutional amendment reordered the Appellate Judicial Circuits to provide for one member to be selected from each. The remaining six judges are to be selected from the State at-large. Pending a vacancy among the at-large members,

there are seven such members, and no representative of the Seventh Appellate Judicial Circuit.

Members of the Court of Special Appeals are initially appointed by the Governor, confirmed by the Senate, and thereafter run on their records, without formal opposition, and are selected to ten-year terms of office, in the same manner as are members of the Court of Appeals. The Chief Judge of the Court is designated by the Governor.

The Court of Special Appeals, except as otherwise provided by law, has exclusive initial appellate jurisdiction over any reviewable judgment, decree, order, or other action of a circuit court and generally hears cases appealed as of right from the circuit courts. Judges of the Court may sit in panels of three. A hearing or rehearing before the full court may be ordered in any case by a majority of the incumbent judges of the Court. The Court also considers applications for leave to appeal in such areas as post-conviction, habeas corpus matters involving denial of or excessive bail, inmate grievance and victims' rights.

The Circuit Courts.

The circuit courts are the highest common-law and equity courts of record exercising original jurisdiction within the State. Each has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where law jurisdiction has been limited or conferred exclusively upon another tribunal.

In each county of the State and in Baltimore City, there is a circuit court which is a trial court of general jurisdiction. Generally, it handles the major civil law cases, most domestic relations and juvenile cases, and the more serious criminal matters.

The circuit courts may also decide appeals from the District Court and from certain administrative agencies.

These courts are grouped into eight geographical circuits. Each of the first seven contain two or more counties. The Eighth Judicial Circuit consists of Baltimore City. Currently, there are 140 authorized circuit court judgeships (30 of them on the Circuit Court for Baltimore City), with at least one judge for each county. Unlike the other three levels of courts in Maryland, there is no chief judge for all of the circuit courts; instead, the senior judge of a circuit is its chief judge. Additionally, eight circuit administrative judges are appointed by the Chief Judge of the Court of Appeals to perform administrative duties in each of their respective circuits, with the aid of county administrative judges.

Normally, each circuit court judge is initially appointed to office by the Governor, and must stand for election at the next general election following by at least one year the vacancy the judge was appointed to fill. The judge may be formally opposed by one or more qualified members of the Bar, with the successful candidate being elected to a 15-year term of office.

The District Court.

The District Court of Maryland was created as the result of the ratification of a constitutional amendment in 1970. It began operating on July 5, 1971, replacing the previous hodgepodge of trial magistrates, people's, and municipal courts. It is a court of record, is entirely State-funded, and has Statewide jurisdiction.

District Court judges are appointed by the Governor to ten-year terms, subject to Senate confirmation. They do not stand election. The first Chief Judge of the Court was designated by the Governor, but all subsequent Chief Judges are subject

to appointment by the Chief Judge of the Court of Appeals.

The District Court is divided into 12 geographical districts, each containing one or more political subdivisions, with at least one judge in each subdivision. There are 104 judges on the Court, including the Chief Judge. The Chief Judge is the administrative head of the Court and appoints administrative judges for each of the twelve districts, subject to the approval of the Chief Judge of the Court of Appeals. A Chief Clerk of the Court is appointed by the Chief Judge. Administrative clerks for each district are also appointed, as are commissioners who perform such duties as issuing arrest warrants and setting bail or collateral.

The District Court is a court of limited jurisdiction, created by a constitutional amendment that was ratified in 1970. The Court has original jurisdiction over all criminal misdemeanors and certain enumerated felonies. The Court also has jurisdiction over all violations of the motor vehicle and boating laws. In the civil area, the Court has exclusive jurisdiction in contract and tort cases where the amount involved does not exceed \$25,000, and concurrent jurisdiction with the circuit courts in cases between \$2,500.01 and \$25,000.

Maryland law does not provide for juries in the District Court. Any citizen who is entitled to and elects a jury trial must receive that trial in the circuit court.

JUDICIAL COMPENSATION

As of July 1, 1999, Maryland judges receive the following annual compensation:

Chief Judge, Court of Appeals	\$137,500
Associate Judge, Court of Appeals	\$120,100

Chief Judge, Court of Special Appeals	\$115,800
Associate Judge, Court of Special Appeals	\$113,000
Judge, Circuit Courts	\$109,200
Chief Judge, District Court	\$113,000
Associate Judge, District Court	\$101,800

Maryland judges are required to participate in a pension system, to which each must contribute six percent of his or her salary annually. The Maryland Constitution mandates retirement at age 70, notwithstanding the federal Age Discrimination in Employment Act. *See Gregory v. Ashcroft*, 111 S. Ct. 2395 (1991).

A judge who has reached age 60 and who has 16 years of judicial service is entitled to retire at a pension equivalent to 2/3 of salary. This is the maximum benefit. A judge with less than 16 years of judicial service may retire at age 60 and receive a pension equivalent to 1/16 of the maximum benefit for each year of service.

A judge who retires because of disability may retire before age 60, and receive a pension immediately, based on his or her years of service.

The surviving spouse of a deceased judge, or if there is no spouse, the minor child(ren), is entitled to a pension equivalent to half the pension the judge would have received had the judge retired on the date of his or her death. A child's share terminates when the child becomes 18.

If a judge dies leaving no surviving spouse or minor children, the amount of his or her contributions to the pension system is paid to his or her estate.

JUDICIAL DISCIPLINE AND REMOVAL

Every Maryland appellate and trial court judge is subject to mandatory retirement at age seventy. In addition, judges of the appellate courts run periodically in noncompetitive elections. A judge who does not receive the majority of the votes cast in such an election is removed from office. Judges of the circuit courts must run periodically in regular contested elections. If a judge is challenged in such an election and the challenger wins, the judge is removed from office. District Court judges face Senate reconfirmation. A judge who is not reconfirmed by the Senate is removed from office. In addition, there are from six to seven other methods that may be employed to remove a judge from office:

1. The Governor may remove a judge "on conviction in a Court of Law, of incompetency, of wilful neglect of duty, misbehavior in office, or any other crime..."

2. The Governor may remove a judge on the "address of the General Assembly" if two-thirds of each House concur in the address and if the accused has been notified of the charges against him or her and has had an opportunity to make his or her defense.

3. The General Assembly may remove a judge by two-thirds vote of each House, and with the Governor's concurrence, by reason of "continued sickness, or of physical or mental infirmity..."

4. The General Assembly may remove a judge through the process of impeachment.

5. The Court of Appeals may remove or retire a judge upon recommendation of the Commission on Judicial Disabilities.

6. Upon conviction of receiving a bribe in order to influence a judge in the performance of official duties, the judge is "forever...disqualified for holding any office of trust, or profit, in this State" and thus presumably removed from office.

7. Article XV, Section 2 of the Constitution, as adopted in 1974, may provide another method as to elected judges. It provides for automatic suspension of an "elected official of the State" who is convicted of or enters a nolo plea for an incarcerable offense which is a felony or which is a misdemeanor related to his or her public duties and involves moral turpitude. If the conviction becomes final, the official is automatically removed from office.

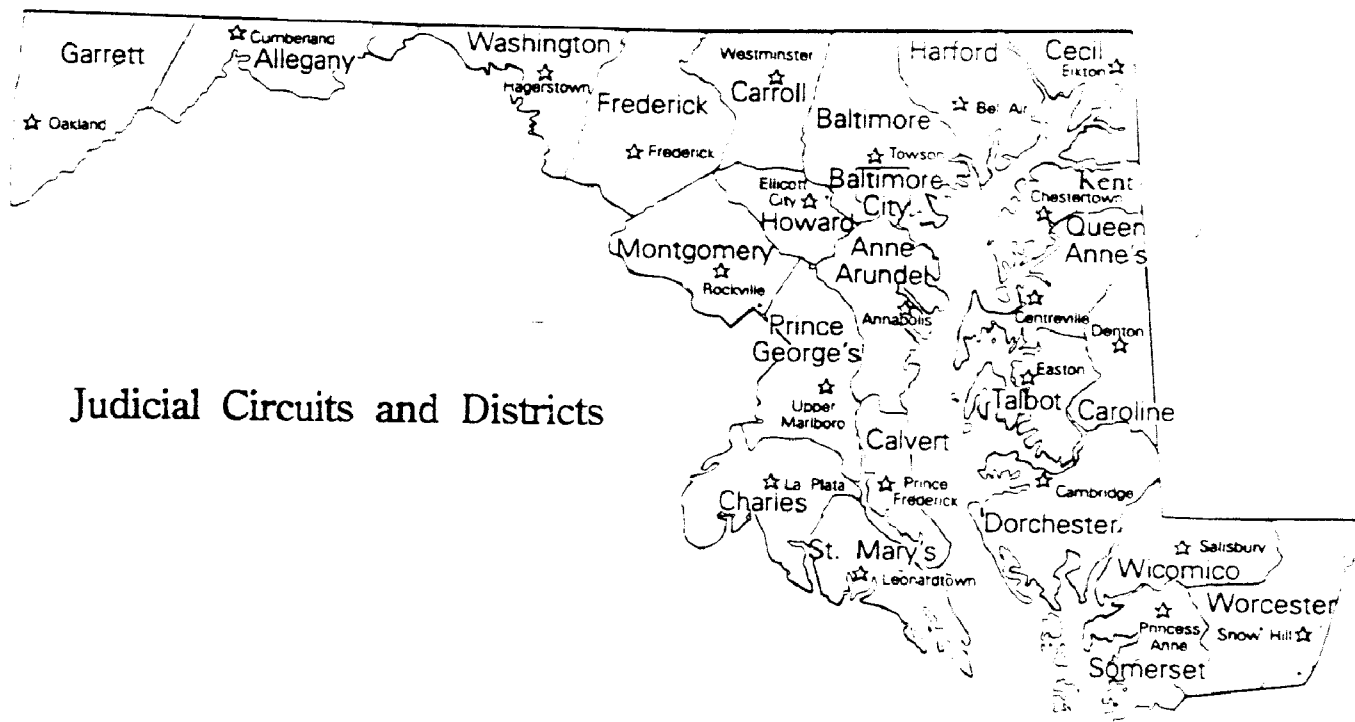
Despite the availability of other methods, only the fifth one has actually been used within recent memory. Since the use of this method involves the Commission on Judicial Disabilities, which also has the power to recommend discipline less severe than removal, it is useful to examine that Commission.

Created in 1966, this Commission consists of eleven persons appointed by the Governor. Three members are judges, three are lawyers, and five are laypersons.

The Commission investigates complaints against judges. If it finds that a judge is guilty of "misconduct while in office, or of persistent failure to perform the duties of his [or her] office, or of conduct prejudicial to the proper administration of justice", it may privately reprimand the judge or it may recommend that the Court of Appeals remove the judge from office, or take some lesser action, such as censure.

If the Commission finds that the judge is suffering from a disability "which is or is likely to become permanent and which seriously interferes with the performance of his [or her] duties", it may recommend that the judge be retired. The final decision rests with the Court of Appeals.

STATE OF MARYLAND



JURISDICTIONS INCLUDED IN APPELLATE CIRCUITS

- First Appellate Circuit—Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester
- Second Appellate Circuit—Baltimore and Harford
- Third Appellate Circuit—Allegany, Carroll, Frederick, Garrett, Howard, and Washington
- Fourth Appellate Circuit—Prince George's
- Fifth Appellate Circuit—Anne Arundel, Calvert, Charles, and St. Mary's
- Sixth Appellate Circuit—Baltimore City
- Seventh Appellate Circuit—Montgomery

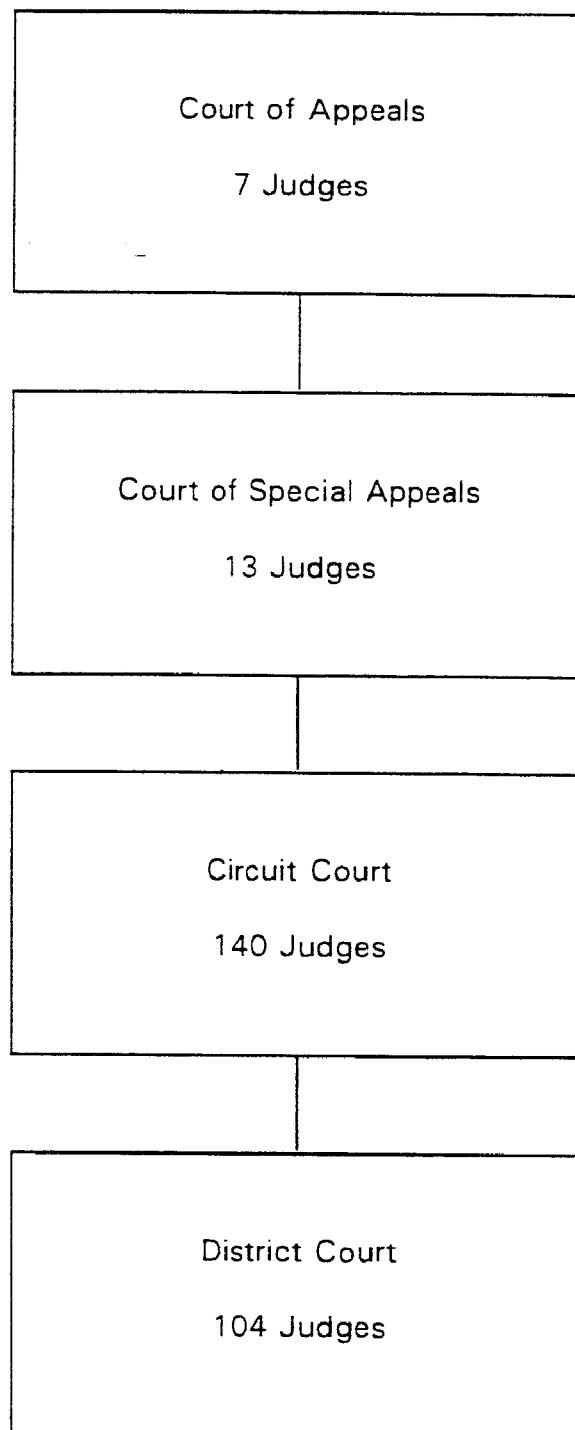
JURISDICTIONS INCLUDED IN JUDICIAL CIRCUITS

- First Judicial Circuit—Dorchester, Somerset, Wicomico, and Worcester
- Second Judicial Circuit—Caroline, Cecil, Kent, Queen Anne's, and Talbot
- Third Judicial Circuit—Baltimore and Harford
- Fourth Judicial Circuit—Allegany, Garrett, and Washington
- Fifth Judicial Circuit—Anne Arundel, Carroll, and Howard
- Sixth Judicial Circuit—Frederick and Montgomery
- Seventh Judicial Circuit—Calvert, Charles, Prince George's, and Saint Mary's
- Eighth Judicial Circuit—Baltimore City

JURISDICTIONS INCLUDED IN DISTRICT COURT DISTRICTS

- First District—Baltimore City
- Second District—Dorchester, Somerset, Wicomico, and Worcester
- Third District—Caroline, Cecil, Kent, Queen Anne's, and Talbot
- Fourth District—Calvert, Charles, and Saint Mary's
- Fifth District—Prince George's
- Sixth District—Montgomery
- Seventh District—Anne Arundel
- Eighth District—Baltimore
- Ninth District—Harford
- Tenth District—Carroll and Howard
- Eleventh District—Frederick and Washington
- Twelfth District—Allegany and Garrett

Chart of Maryland Judiciary System



Appendix 9

The Qualities of a "Legally and Most Fully Professionally Qualified" Applicant¹

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1. **Judicial Temperament:** This character trait encompasses both the ability to apply the law to the facts and to understand how a judicial decision will affect the human beings before the court. It is the ability to communicate with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to listen to and consider what is said on all sides of a debatable proposition.

A candidate should exhibit the following aspects of proper judicial temperament: patience, open-mindedness, courtesy, tact, courage, punctuality, firmness, understanding, compassion, humility and common sense. Those qualities should be demonstrated uniformly. For applicants who already hold a judgeship, these qualities should have consistently manifested themselves to all the court's "stakeholders" interacting with the judge regardless of station in life, profession, type of case, representation by counsel or lack thereof.

A judicial candidate should be able to exercise forbearance under provocation, to deal with others with sensitivity and without giving offense, and to assimilate data outside the candidate's experience without bias and without undue difficulty or stress. A candidate should be able to handle personal stress without unloading on others; he or she should recognize that the position is not only stressful but an official governmental position of public trust, with its business conducted largely in full view; and that criticism and scrutiny are inherent in the position. Candidates fearful of or uncertain about these aspects of the job should be counseled to reconsider.

2. **Intelligence:** This is the ability to know and apply legal rules, analyses and procedures to different facts and circumstances, and the ability quickly to perceive, comprehend, and understand new concepts and ideas.

A candidate should be smart and knowledgeable about the law, intellectually creative and able to analyze problems logically to arrive at sensible results or conclusions. Not every judge on every bench must be a brilliant legal scholar, but all should be solidly capable on legal issues.

3. **Ethics:** There should be no doubt about an applicant's personal or professional ethics.

As a lawyer, a candidate should have maintained a standard of conduct above the minimum standard set forth in the disciplinary rules and should not have been disciplined by the Attorney Grievance Commission. A candidate should be aware of and abide by the ethical principles enunciated in the Code as guidance in specific situations.

¹Reprinted from the Final Report of the Maryland State Bar Association Special Committee on Judicial Personnel Management Issues of the Section on Judicial Administration, dated December 20, 1998.

A candidate should have taken part in continuing Bar activities in the areas of Legal Ethics and Professionalism.

A candidate should have demonstrated a personal standard of ethical conduct that stands out among both the general citizenry and the applicant's fellow practitioners.

4. Courage and Integrity: "Courage" is "the willingness to do what the law requires the judge to do even though the course the judge must follow is not the popular one." "Integrity" is not doing what the judge knows to be wrong.² A judicial applicant should possess both of these important character traits.

5. Experience and Education: Prior professional activities, legal education, teaching, bar activities, and publications are very important. The type and amount of experience necessary varies depending on the judicial position sought.

A candidate should generally have been an active member of the Bar for at least five years.

A candidate for the trial bench should have engaged in an active courtroom practice and should almost always have had some litigation experience. Extensive experience in representing clients before administrative tribunals may qualify as litigation experience. However, non-litigation experience (e.g., teaching, government or corporate counsel background), combined with high ratings on other criteria, particularly intelligence and judicial temperament should not be ignored.

The assessment of specific qualities may properly be weighed where specific attributes are needed. For example, a particular Circuit Court might need a judge for its Family Division; a family law background or prior experience as a Master would be especially useful. Alternatively, a particular jurisdiction might need a judge to assist in the trial of an influx of mass tort, products liability or malpractice cases. In such an instance, a background as a litigator would increase an applicant's value.

Education and experience might be defined differently for appellate positions. For this reason, extra careful attention should be paid when trial court judges apply for appointment to an appellate court; the qualities which have led to success as a trial court judge may not predict equal success at the appellate level. Appellate judicial candidates generally should have credentials as appellate lawyers, both in brief writing and oral argument.

6. Suitability to Workload: A candidate should demonstrate his or her compatibility with the workload of the court. Those who dislike writing opinions should not be recommended for appellate positions. Those who dislike traffic cases or domestic cases would similarly be poor choices for the district and circuit courts, respectively.

² These definitions are those of Robert F. Sweeney, former Chief Judge of the District Court of Maryland.

7. Continuing Legal Education: A judicial candidate's history of attendance at continuing legal education programs should be considered as a good indicator of a person's interest in remaining current in the law. As discussed in section III.B.8. of this Report, this factor is perhaps the best indicator of whether a judge will be motivated to improve his or her knowledge, willing to continue with his or her "legal education" and be open to new ideas, evolving attitudes, legal developments, and change in general.

8. Ability to Communicate: This is the ability to express oneself clearly, concisely, and grammatically, whether orally or in writing. It includes the ability to listen,

All judicial candidates must have strong oral and written skills; candidates for appellate positions require superior writing skills. A candidate for the trial bench must be able to express him or herself well both orally and in writing.

Chief Judge Robert M. Bell has emphasized the need for judges to communicate not just in the courtroom but also in the communities in which they serve and to the other branches of government. While not every judge must be a skilled and articulate public speaker, at least some should be.

9. Civic and Professional Responsibility: This is contribution to the public and the legal professional through organized Bar and non-Bar service organizations, volunteer activities, civic and cultural organizations.

A candidate should receive favorable consideration for his or her pro bono, public service and or professional activities.

10. Health: A candidate should be in sufficient physical and mental health to perform the duties of the office, such that he or she will be able to render vigorous and effective service for the foreseeable future. A prior history of stress-induced illnesses, migraine headaches, chronic fatigue syndrome, or poor attendance in the present job should be warning flags and a candidate having such a background should normally not be nominated, as the ability to tolerate conflict, pressure, and stress are essential. The Attorney General's Office should be requested to advise the Nominating Commission on how to harmonize these goals with the Americans with Disabilities Act.

11. Character: This most important overall quality is a key intangible. The applicant should be of the best character. He or she should have a positive reputation in every professional and residential community. His or her background should be free of references to immorality or indiscretions. He or she should be free of a history of substance abuse or substance dependence, and free of indications of domestic violence, publicly unacceptable conduct and the like. Candidates should be financially stable.

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